UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

ACTIVISION PUBLISHING, INC.,	)	
Employer,	)	
and	)	**Case No. 18-RC-289570**
COMMUNICATION WORKERS OF AMERICA, AFL-CIO	)	
Petitioner.	)	

POST-HEARING BRIEF OF ACTIVISION PUBLISHING, INC.

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I. INTRODUCTION

On January 27, 2022, the Communication Workers of America ("CWA," "the Union," or "Petitioner") filed a petition to represent Quality Assurance ("QA") testers and leads working at the Raven Software studio, located in Middleton, Wisconsin ("Raven Software" or the "Raven studio"). Raven Software is a division of Activision Publishing, Inc. ("Activision" or the "Company"), and the CWA's petition covered only a tiny fraction—less than 10%—of the Raven studio, which is the sole Raven facility. The petitioned-for unit is inappropriate under the Board's controlling precedent of *The Boeing Company*, 368 NLRB No. 67 (2019), because the shared interests of the petitioned-for and excluded Raven studio employees far outweigh their distinctions. This is unsurprising, as a production facility making video games—like any other production facility—typically falls under a "wall-to-wall" unit standard that incorporates quality control employees into an appropriate broader unit. To underscore this point, the current unit standard for the video game industry—set by the CWA itself—is a studio-wide or "wall-to-wall" unit.

Specifically, the petitioned-for unit does not track Raven studio's organizational structure and excludes other employees at Raven studio, who share almost identical terms and conditions of employment with employees within the proposed unit. First, the petitioned-for unit ignores that, per a Raven announcement on January 24, 2022, the QA leads and testers (collectively, "**Embedded QA Testers**") are spread throughout and individually integrated and embedded into the various departments across Raven studio. Notably, this embedded testing model was planned and announced prior to the date the instant election petition was filed. Beginning in early December 2021, Raven converted QA Testers from temporary contract employees to full-time employees, as Raven "wanted to focus the testers at Raven to be embedded testers." Rather than constitute their own department, **Embedded QA Testers** are now permanently embedded into

each of the following departments at the Raven studio: Art, Production, Design, Engineering (or Programming), Audio, and Animation.

Second, the petitioned-for unit excludes other Raven studio employees who regularly collaborate, often daily, with the **Embedded QA Testers** during Raven studio's game conceptual design, creation, and production process,[1] known as the "game development process." All employees who "touch" the video game and are involved in the creation and production of video games at Raven studio are vital members of Raven's process, using their testing and technical knowledge and working together to envision, create, test, and perfect a video game that meets Raven's high standards of quality and demanding player expectations. While **Embedded QA Testers** serve an important function of checking for "bugs" in the game, this function can only occur in concert with ongoing continual game design, creation, and production functions within the studio, which involve **Embedded QA Testers** until well after the game is released. In other words, **Embedded QA Testers** are just that, embedded directly into various departments across the studio and participating alongside their colleagues in all stages of the game development process. Indeed, the **Embedded QA Testers'** basic function is to work with game content at *each* of the game development stages, while regularly communicating with other game development employees within their specific departments, and sometimes outside their departments, about that content. Thus, **Embedded QA Testers** *must logically work closely with other content-creating employees at Raven studio, and are inherently integrated with those employees.* Because they work so closely together, **Embedded QA Testers** share most important terms and conditions of employment, including common benefits, working conditions, and supervisors, with their studio colleagues who participate in the game

[1] This entire process, explained further below, is seven stages: Concept, Pre-Production, Production, Alpha (or Post-Production), Beta, Launch, and Post-Release. See discussion *infra* Section II(C).

development process. **Embedded QA Testers** do not share an internal community of interest that is sufficiently distinct from the interests of the excluded employees; both groups work together on the same content to further the same central goal—the development of a high-quality video game product.

Under the legal standard, it is the Petitioner's burden to show that the distinct interests of employees outside the proposed bargaining unit outweigh their shared interests with **Embedded QA Testers**, *Boeing*, 368 NLRB No. 67, slip op. at 6, but the Petitioner failed, as the evidence in this case shows ***exactly the opposite***. Employees in the Animation, Art, Audio, Community, Design, Engineering, Information Technology ("IT"), and Production Departments "would largely have the same interests" as **Embedded QA Testers** in the context of collective-bargaining, and their common interests with the **Embedded QA Testers** indeed overwhelmingly outweigh any interests that might be distinct ones. Any failure to include all Raven studio game development employees in the unit would therefore create an impermissible fractured bargaining-unit, ill-suited for collective bargaining, under the governing test set forth in *PCC Structurals, Inc.*, 365 NLRB No. 160 (2017), and clarified in *Boeing*.

Even under the now-defunct legal standard of *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013), the Union's petitioned-for unit is still inappropriate, because the excluded Raven studio game development employees share an overwhelming community of interest with the petitioned-for **Embedded QA Testers**.

Moreover, the "workforce in flux" doctrine requires the Region to view all facts through the lens of the complete embedded model because the petitioned-for unit of **Embedded QA Testers** no longer operates as a separate, standalone team. Rather, they have been integrated

across a number of other departments and work directly and hand-in-hand with the employees of those other departments. Raven studio's future plans for the embedded testing model must be credited as equally definite and certain as those already-implemented parts of the embedded model. With that focus, the Region should clearly see that the **Embedded QA Testers** are part of one cohesive unit of all game development employees at Raven studio.

For the reasons above, as described more fully below, the Regional Director should determine that the appropriate unit in this case must include the classifications included in the Employer's Revised Statement of Position, because excluding these employees would run afoul of *PCC Structurals*, *Boeing*, and the workforce in flux doctrine. If the petition remains supported by a sufficient showing of interest, the Regional Director should direct a mail election accordingly. If not, the petition should be dismissed.

II. STATEMENT OF FACTS

A. The Company

Activision is a video game developer and publishing company, with a commitment to producing high quality video games.

In August of 1997, Activision acquired the gaming company Raven Software located in Middleton, Wisconsin (Tr. 24:14-20).[2] Since being acquired, Raven Software has continued to operate out of the Raven studio, its sole physical company facility. Raven Software continued to make its own video games and also served as a support studio assisting in the development of other Activision video games (Tr. 25:1-26:1). In 2010, Raven began working on Activision's Call of Duty franchise (Tr. 25:14-18). In November 2020, in addition to continuing to support Activision's annual Call of Duty game releases, Raven Software became *the lead studio* for Call

[2] References to the Hearing testimony are in the form of "Tr. [Page]:[Line]," and references to the Employer's Exhibits admitted at the hearing are in the form of "R. Exh. __."

of Duty Warzone ("Warzone") (Tr. 56:19-22). This was a significant change in role for Raven, making it a more central and more critical player than ever in the Activision publishing effort (Tr. 55:7-56:22). Unlike other Call of Duty titles which are released on an annual basis, Warzone is a live game that operates 24/7 with up to 150 players in a single match and requires constant updates and bug fixes[3] (Tr. 54:15-23, 55:7-56:22, 324:20-325:3).

B. Raven Operational Structure

To make a video game, Raven studio requires many areas of expertise known as disciplines. Specifically, Raven studio is made up of the following departments: Community, Audio, Information Technology ("IT"), Art, Design, Engineering, Animation, and Production (Tr. 37:15-22; R. Exh. E-4). The Community Department is responsible for keeping players updated on game developments and handling player feedback requests (Tr. 32:2-37:14). The Audio Department is in charge of every sound that a player hears during the game (Tr. 30:3-8). The IT Department ensures that Raven has the appropriate hardware and software to support the development and production of the games (Tr. 30:8-20). The Art Department is responsible for everything a player sees during the game (e.g., lighting and visual effects) (Tr. 29:4-13). The Design Department is in charge of the games' virtual environments and gameplay decisions (Tr. 28:17-29:3). The Engineering Department is responsible for everything "behind the scenes" that makes the games run (Tr. 29:15-30:1). The Animation Department is in charge of anything in the game that moves (Tr. 30:22-31:6). The Production Department makes sure everyone understands all the tasks necessary to create a game and coordinates these tasks between departments to ensure harmony and efficiency (Tr. 31:8-17). The directors of each of these departments report up to the Studio Head (Tr. 27:16-32:18). The departments all work together

[3] *See* Wikipedia, "*Call of Duty: Warzone,*" https://en.wikipedia.org/wiki/Call_of_Duty:_Warzone (last visited March 14, 2022).

at each step of the game development process to create the games (Tr. 39:12-54:5, R. Exh. E-5). Because Call of Duty is a first-person perspective game in a large-scale and intricately detailed environment—essentially an imaginary world—there is an enormous amount of content that the above departments need to create and integrate for Call of Duty to work.

In addition to each of the departments, there are also two main functional teams at Raven: the Warzone Team and the Campaign Team. The Warzone Team, led by Senior Creative Director Eric Biessman, focuses on producing the monthly releases and various developments of Warzone, the live game that operates 24/7 (Tr. 28:5-10). The Campaign Team, led by Senior Creative Director Dan Vondrak, focuses on annual releases of new Call of Duty titles (Tr. 317:5-12). (A "campaign" is a single-player mode in video games, including Call of Duty, where a player progresses through a narrative story, or "campaign."). Both Teams consist of employees from across all departments, who work together to develop their assigned products and achieve their Team's goals (Tr. 655:12-22, 661:3-10).

C. How to Make a Video Game – Integration of Process

To understand the community of interest among Raven employees, one must understand how a video game is made. There are seven major stages to the video game development process (Tr. 39:11-54:5; R. Exh. E-5). All Raven studio employees work together throughout the development process while communicating continuously via the studio's various group-communication platforms, including e-mail, Slack, Confluence, and Jira[4] (Tr. 44:3-45:1, 707:11-14, 818:21-25, 849:9-14, 866:2-15, 920:15-22, 964:20, 1048:15-17).

[4] Slack is a communication platform that allows teams to create specific channels of discussion, in which members can also share drawings, concepts, and files (Tr. 44:13-22). Confluence is similar to a wiki page, which includes active links, and serves as an internal guidebook for the product (Tr. 44:3-45:1, 205:19-206:1, 470:17-23). Jira is a program used to track issues (or "bugs") identified within games, to ensure these issues are addressed and fixed by the proper teams, with the appropriate amount of urgency (Tr. 44:24-45:5, 191:20-192:15).

The first stage of the development process is the Concept stage, when the team comes up with the creative vision for a new game (Tr. 40:1-8). This is the "What are we making?" phase (R. Exh. E-5 at 2). The Concept stage involves collaboration among all departments within Raven studio; each department has multiple brainstorming sessions to flesh out the concepts in the proposed game, so the studio can pitch the idea to Activision (Tr. 40:10-18, 422:13-15, 479:21-480:20, 682:11-17, 1030:14-19, 1031:14-19, 1033:12-25).

After Raven studio receives approval from Activision on the general concept behind a new video game, the game moves to the Pre-Production stage (Tr. 42:2-17). During this second stage, the studio puts together a "vertical slice" of the proposed game to demonstrate what makes the game stand out (*Id.*). This is intended to demonstrate the full experience of the game, similar to creating a scene out of a movie (Tr. 42:8-10). This is the "prove it" phase (R. Exh. E-5 at 3). All departments at Raven studio participate in this stage, as the studio must work together to create a polished preview that demonstrates the anticipated quality and experience of the game when it is complete (Tr. 42:18-23). The goal is to hit all points needed to receive a "green light" from Activision to move forward with full game creation (Tr. 42:10-17).

The third stage of the development process is the Production stage, or the "create it" phase (Tr. 45:13-19; R. Exh. E-5 at 4). During this stage, the Production Department breaks down and assigns all the tasks that need to be completed by each department within Raven, covering the complete development of the game until completion (Tr. 45:13-19). Thus, every department works from its own plan for how it will contribute to the creation of the game, and how it will interact with all the other departments in harmony to achieve their common goal (*Id.*). The Production stage contains "checkpoints" approximately every three months to present to Activision the progress being made on the game (Tr. 45:20-24).

The next stage of video game development is the Alpha stage, or the "testing" phase (Tr. 47:10-15; R. Exh. E-5 at 5).[5] Once a game reaches the Alpha stage, all major components of the game have been created, but not yet perfected (Tr. 47:10-15). Thus, the Alpha stage is devoted to polishing the game so that it becomes consumer-ready (Tr. 47:10-15). All departments must participate in the Alpha phase, and many teams have daily "stand-up check-ins" so that all employees within the team are aware of their daily priorities (Tr. 48:13-49:8).

The fifth stage of the development process is the Beta stage (Tr. 49:11-22). At this point, the game is complete, and Raven studio works with console video game platforms, such as Sony and Microsoft, to identify and address any remaining problems with the game, particularly as it relates to hardware compatibility (Tr. 49:11-50:5). Raven studio employees continue collaborating during the Beta stage, as issues must be resolved in all aspects of the game, in a timely manner, before it can be made available to players.

The next stage, Launch, is perhaps more of a milestone than a developmental phase. During Launch, the game is released to the consumer, to be placed on store shelves and/or uploaded to the internet (Tr. 51:6-11; R. Exh. E-5 at 7). Given their collective hard work until this point, this moment in time is generally a period of celebration within the studio (Tr. 51:12-19).

The final stage of development is the Post-Release stage, where the studio works together to address issues within the game that have now been identified by consumers (Tr. 52:5-10). This is also referred to as the "update it" phase (R. Exh. E-5 at 8). Community managers relay feedback from consumers to the studio, and all departments work together to address issues in a

[5] The Alpha stage is also referred to as the Post-Production stage (Tr. 479:15-16).

timely manner, as they do with bugs identified earlier in the game development process (Tr. 52:14-53:2).

Notably, there is more employee interaction in Raven's video game development process than in a traditional "assembly line." A partial product does not move sequentially from one group to the next, but is shared and goes back and forth repeatedly among many groups working in collaboration. In Raven's development process, most of the employee team must work with colleagues across departments and job classifications, including **Embedded QA Testers**, on *every successive stage* of production. Departments do not simply hand off work to other departments and then exit the process, at any point. While the nature of the work changes in each stage of development, all Raven employees continually contribute to the production process. *See, e.g.*, (covering the Animation Department's shifting roles: Tr. 681:22-682:3, 682:16-21, 684:1-15, 684:22-685:11, 686:11-24, 687:1-10, 687:23-688:16).

D. Community of Interest Factors In Game Development

1. *Similar Skills and Training*

Raven considers employees across all job classifications that "touch" the game to be developers, including **Embedded QA Testers**, because they contribute their own ideas (Tr. 614:7-8). In fact, in response to a question from CWA's counsel, witness David Pellas (Senior Director of Design and Art) stated unequivocally:

Q. Mr. Pellas, do you consider QA testers to be developers?
A. I do.
Q. Even though they only test and validate?
A. Everyone at Raven is a developer. We listen to everyone. Ideas come from everywhere. They have opportunities to contribute throughout our entire development process; at the play test with us everyday, they sit in the pit with us, do our stand-up right after play test. They are very vocal on Slack channels as far as idea they want to push and make the game better. QA are some of the strongest contributors to our games. If that doesn't make them a developer, I don't know what does.

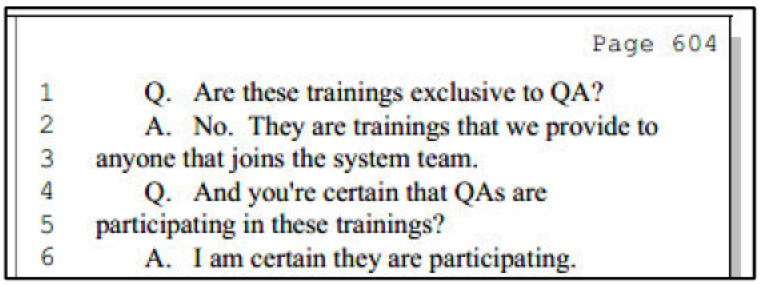
(Tr. 576:3-16).

Similarly, regardless of position, all Raven employees are expected to identify bugs and issues in the game—not just **Embedded QA Testers** (Tr. 751:4-10, 764:10-14). For example, Martin McBain (Senior Director of Animation) testified that "there is not really a difference" between how an animator and an **Embedded QA Tester** tests a game, stating that, regardless of who is testing, "[y]ou're playing the game, going to that location with [sic] that animation is playing and checking that animation is working correctly." (Tr. 755:12-18). David Pellas similarly testified that "[e]very position at the studio performs testing." (Tr. 447:10-11). Consistent with this, from about May 2021 to February 2022, between 17%-21% of all bugs opened in Jira at Raven were opened by employees who are not QA Testers (Tr. 342:22-343:1; R. Exh. E-29). Raven provides employees training documents on testing and how to identify bugs using the Jira tool during onboarding or the employee's first week of employment (Tr. 447:12-22; R. Exh. E-15). The in-depth version of the Jira training taken by **Embedded QA Testers** is also made available to *all employees* because they all perform testing (Tr. 452:5-12, 454:10-21; R. Exh. E-16).

In addition, when **Embedded QA Testers** identify a bug, that bug is entered in Jira, and then moved to the appropriate department's bucket for a fix (Tr. 822:11-13). Once the department performs the fix, the report is sent back to the **Embedded QA Testers** to review the game to see if the bug is actually fixed (Tr. 822:13-18). In the event the department is unable to correct the bug, the **Embedded QA Tester** would be asked to "jump on a server" and show the other employee "how to reproduce the bug" so that they could make the fix (Tr. 826:12-14). This functional integration between the **Embedded QA Testers** and the other employees in the department is critical to the successful operation of the game.

All game development employees, including **Embedded QA Testers** are encouraged to contribute ideas and/or content to the game development process (Tr. 727:18-23). For example, in early 2022, game development employees on the Warzone team were asked to suggest classic Call of Duty weapons that they would like to see incorporated into Warzone (Tr. 728:6-11). In response, an **Embedded QA Tester** in the Animation Department proposed several different weapons—which are currently going through the review and approval process (Tr. 728:16-25; R. Exh. E-32). **Embedded QA Testers** even provide feedback on the game itself, which makes sense, as "QAs are the ones that are playing it the most and are the most familiar." (Tr. 989:3-7).

Embedded QA Testers also receive similar department-specific training as their departmental peers. For example, **Embedded QA Testers** in the Art Department receive training on that department's integration tools and how employees use those tools (Tr. 603:8-25). Pellas reaffirmed this on cross-examination, and was never contradicted:



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Q. Are these trainings exclusive to QA?
A. No. They are trainings that we provide to anyone that joins the system team.
Q. And you're certain that QAs are participating in these trainings?
A. I am certain they are participating.

(Tr. 604:1-6). In the Animation Department, **Embedded QA Testers** are being trained on department-specific tools as well (Tr. 772:17-21). For example, since implementation of the embedded model, **Embedded QA Testers** in the Animation Department have greater access to, and/or are being trained on:

- Maya (an application used for rigging);
- Cortex (an application used within the motion capture stage);
- Motion Builder (a 3-D application used in motion capture);
- Photoshop and After Effect (video editing applications); and
- Perforce (the department's file management system)

(Tr. 707:14-19, 712:11-19, 713:5-11, 719:6-16, 827:1-5; ,1028:13; R. Exh. E-20). These are the same tools and platforms used by other Animation Department employees (Tr. 719:6-16).

2. ***Shared Supervision***

In addition to the studio's departmental organization, all game development employees, including **Embedded QA Testers**, are assigned to either a Warzone or Campaign project team (Tr. 660:12-661:1). The Warzone and Campaign project teams consist of employees from multiple departments and classifications across the studio (Tr. 947:11-12, 1046:16-19). Dan Vondrak is the Creative Director for the Campaign team and is responsible for assigning duties and tasks to all the game development employees, including **Embedded QA Testers**, on that project team (Tr. 320:4-13, 322:13-18). Eric Beissman is the Creative Director for Warzone and

similarly leads all the game development employees, including **Embedded QA Testers**, on his project team (Tr. 661:2-10).

3. ***Common Terms and Conditions of Employment.***

All employees at Raven are served by the same Human Resources ("HR") team (Tr. 108:7-12). All Raven studio employees are also subject to the same workplace policies and procedures (Tr. 108:13-15, 844:11-14). Employees from different departments are onboarded together and are provided with company-wide policies, and company-wide trainings like anti-discrimination (Tr. 844:8-19). The Activision Handbook contains a large set of policies and procedures which apply to all Raven employees (Tr. 108:16-23). All full-time Raven employees, including **Embedded QA Testers**, undergo the same performance evaluation process (Tr. 108:24-109:3).

4. ***Similar Pay Scale and Common Employee Benefits***

All positions at Raven Software have minimum and maximum compensation bands (Tr. 623:1-6). For hourly employees, this band is based on an estimated total of 2080 hours of work over the course of a year (or a 40 hour per week average) (Tr. 623:17-624:1). A central, corporate Compensation Team at Activision establishes these compensation bands; the Raven Human Resources Business Partner has no authority to set compensation bands (Tr. 636:23-637:3). Depending on the level, **Embedded QA Testers'** compensation bands range from $27,500 to $69,400 (R. Exh. E-30). Although this is on the lower end of the wage scales at Raven Software, the **Embedded QA Testers'** compensation bands overlap, to some degree, with approximately 60% of employees in the proposed unit (R. Exhs. E-30, E-30A; E-31). What is more, **Embedded QA Testers'** compensation bands overlap with job classifications in *every* other department (*Id*.).

Additionally, all full-time Raven studio employees, including **Embedded QA Testers**, receive the same benefits options, including medical, vision, and dental (Tr. 104:10-105:1, 892:1-13; R. Exh. E-9). Further, **Embedded QA Testers** are eligible for the same studio-wide bonus pool as all other full-time employees at the Raven studio (Tr. 105:24-106:3). **Embedded QA Testers** also receive the same paid time off as all other full-time Raven studio employees (Tr. 122:3-11).

All employees at Raven studio, including **Embedded QA Testers**, are also eligible to receive Raven Software "swag," such as shirts, company store credit, mouse pads, or chairs, as well as company gifts during the holidays (Tr. 106:4-25). What is more, **Embedded QA Testers**, along with all other Raven studio employees, are eligible for "crunch perks," or perks intended to support employees working overtime (Tr. 107:1-20).

5. ***Hiring Processes and Same Onboarding Training***

The hiring process for **Embedded QA Testers** involves employees across departments (Tr. 92:11-17). Specifically, an **Embedded QA Tester** candidate would interview with a panel made up of the QA Manager, Robert Clark, and supervisors from the team in which the candidate would be embedded (*Id*., Tr. 787:9-22). The hiring decision would then be made based on the recommendations of that panel (*Id*.).

Upon hire, all employees, including **Embedded QA Testers**, have the same onboarding experience (Tr. 96:13-17, 844:8-11). **Embedded QA Testers** attend the same orientation trainings alongside employees across all departments (Tr. 96:13-17, 843:15-21). During the new hire orientation, all employees, including **Embedded QA Testers**, complete the same new hire paperwork, review the same Company policies, and receive the same anti-discrimination training together (Tr. 96:18-23, 844:5-14).

6. ***Same Hours of Work and Timekeeping Process***

All non-supervisory employees at Raven primarily work the same daily schedule (Tr. 96:24-97:2). Core hours for employees are from 9:00 a.m. to 5:00 p.m., Monday through Friday (Tr. 97:5-6; 97:9-10, 853:24, 915: 8, 1003:16-18). While there might be some fluctuation in scheduling due to individual needs or department deadlines, non-supervisory employees such as **Embedded QA Testers**, all generally share the same work schedule (Tr. 97:5-10). Further, all non-exempt employees in the studio record time the same way via Workday, a time management system (Tr. 97:17-98:2, 154:3-14, 914:24-25, 983:10-12, 1003:12-14).

7. ***Frequent Contact and Interchange***

The interactive processes, described in Section II.A-C and above, involve significant contact between employees of all classifications and all departments. This contact spans both Raven's communications systems and in-office contact. Further, Raven employees may transfer, and actually have transferred, to positions in other departments within the studio (Tr. 837:12-21).

a. Shared Communications Systems

Despite the remote work environment due to the pandemic, there is still frequent contact among testers and their departments as well as inter-departmental contact across the studio. All Raven employees utilize email, Zoom, Slack, and Jira to communicate with each other (Tr. 455:8-10, 696:2-13, 708:1-5, 818:21-25). The **Embedded QA Testers** interact with both their departments and positions in other departments via Zoom and Slack every day (Tr. 185:15-19, 191:2-11, 205:11-17, 456:3-9, 696:5-12, 707:8-14, 818:21-25, 958:9-10, 979:11-14). Similarly, **Embedded QA Testers** interact with their departmental teams through Jira everyday—indeed, any position within Raven can direct a Jira report to another Raven employee to request or advance collaboration on a task (Tr. 191:18-192:4, 457:19-459:2, 708:1-5, 786:10-12, 823:25-824:1).

b. Meetings

Raven employees also have frequent contact through regular studio meetings. Raven leadership holds virtual "Town Hall" meetings every two weeks to a month to communicate studio news to employees, including updates on ongoing projects or return to office plans (Tr. 468:5-23, 469:1-6, 860:14-22). All employees at Raven attend these meetings, including **Embedded QA Testers** (Tr. 469:7-12). Departments also hold their own department and team specific meetings, which **Embedded QA Testers** are invited to attend (Tr. 666:1-11, 686:1-4; R. Exhs. E-22, E-23, E-24, E-25). The Warzone and Campaign teams also hold "burn-down meetings" to assess their own bug "burn-down" (i.e., bug fix progress), what was accomplished the previous day, and other project issues (Tr. 206:21-207:14, 466:19-24, 476:12-14, 857:8-25). During the meetings, the teams look at the number of bugs, and identify any new team priorities to reduce the bug count (Tr. 467:1-18). On the Warzone team, burn-down meetings are held "all the time" (Tr. 467:20). On the Campaign team, burn-down meetings are held less frequently during early development phases but increase in frequency to nearly every day as Launch gets nearer (Tr. 467:20-23). Employees working on a team also participate in stand-up meetings twice a week where employees update the team on their current work and discuss upcoming work (Tr. 459:18-21; R, Exh. E-28). Everyone involved on a particular feature of the game or team, including **Embedded QA Testers**, attends the meetings (Tr. 460:14-19, 917:9-13). **Embedded QA Testers** also participate in the "many, many group email threads and e-mail list and team meetings and Slack channels and Confluence pages" that departments maintain (Tr. 696:2-13, 917:6-8).

c. In-Office Contact

When the studio returns to the office in the post COVID-19 era, Raven employees will have additional opportunities for contact. Instead of sitting next to each other at the studio, as

QA Testers did (in some cases) before the embedding, **Embedded QA Testers** will now physically sit in their respective departments where they are embedded (Tr. 382:18-383:7). For example, the three **Embedded QA Testers** assigned to the Art Department will all sit in the same space as the employees in that department. (Tr. 382:18-383:7). The Campaign Team sits in a "big . . . amorphous area" spanning two floors of the facility where everyone who is a part of that team is seated together to facilitate collaboration, including the team's **Embedded QA Testers** (Tr. 375:7-15, 444:10-16). The visual effects department, Animation Department, and team meeting rooms are all located on the lower level under the Campaign team (Tr. 444:16-20.) Similarly, upon returning to the office, **Embedded QA Testers** assigned to the Animation Department will sit with other employees in that department (Tr. 738:3-5). The Systems team sits in the main area of the studio behind the pit (see below) (Tr. 410:9-10). Thus, the Systems Designers, UI and UX Engineers, UI Art, creative direction, Production, and the **Embedded QA Testers** on the Systems team sit together in this area (Tr. 410:11-18, 440:7-10). The two **Embedded QA Testers** in the Art Team assigned to the Campaign Team will sit with the environment art group, who also sit alongside Artists of multiple specializations, as well as Level Designers and Production (Tr. 440:10-16).

Upon returning to the studio, Raven employees will continue to gather and play video games at the pit just like they did before the COVID-19 pandemic (Tr. 441:8-9). The pit is a communal play space that is approximately 20 yards long with a series of computers set up for all employees to get together to play experience, test, and provide feedback on what they have all been working on (Tr. 441:11-17, 442:11-13). The pit is open to all employees at the studio and its access is not restricted to a certain department or group of employees (Tr. 441:25-442:13).

Upon return to the studio, all Raven employees will continue to use the same studio amenities as they did before the COVID-19 pandemic. For example, they will all continue to use the same breakrooms and restrooms. (Tr. 445:14-20). All employees will continue to utilize the general parking area or the overflow parking ramp 30 yards away whenever the general parking lot is full (Tr. 445:22–446:3).[6]

d. Interchange

All employees at Raven are permitted to transfer between positions and between departments at the studio (Tr. 93:3-10). In 2021, prior to the embedded model, a number of QA Testers transferred to positions in other departments throughout the studio (Tr. 94:15-19; 837:12-21; R. Exh. E-7). For example, QA Testers have transferred to become an Engineering Technician in the Engineering Department, a Production Coordinator in the Production Department, an Integration Artist in the Art Department, and onto the Motion Capture team in the Animation Department, among others (R. Exh. E-7; Tr. 95:4-96:1, 733:13-734:5). In Q4 of 2021 alone, four QA Testers moved to the Production Department (Tr. 214:2-13). There is no indication that this will change (Tr. 733:5-12, 734:17-735:8). Also, as described in III.C.6. below, non-QA Raven studio employees are temporarily engaged in quality control functions, often alongside **Embedded QA Testers.**

[6] About five years ago, QA testers parked in the parking ramp closest to their workstations due to a lack of parking space in other locations (Tr. 446:7-15). This practice lasted about a year and was discontinued (*Id.*). Since then, QA testers have parked in the same parking lot with the rest of Raven employees (*Id.*).

E. Summary of Job Classifications Involved in the Game Development Process

1. *QA Testers Generally*[7]

The primary job of QA Testers, including **Embedded QA Testers**, is to be the "tester of features and content coming into the game" (Tr. 815:21-22). To do this, QA Testers take "the game as it [comes] every day with its newest updates and features" and "div[e] in depth to expose any bugs the consumer may see and report those to be fixed." (Tr. 815:23-816:1). The "idea is that QA testers are people who make sure not only everything that the developers are putting forward but all these concepts that the team put into the game are something at their highest quality that could represent the best experience" for players (Tr. 1057:11-16). Some QA Testers also attend daily "burn-down" meetings with other classifications within departments (Tr. 857:8-13). In addition, there are times when QA Testers are called into additional meetings with other classifications/departments because there may be features that other departments "wanted QA input on." (Tr. 857:13-15). Testers add "a tremendous amount of value" to the "overall game development process." (Tr. 1057:20-22).

a. Prior "Pool" or "Package" Testing Model

Previously, Raven utilized a "pool" or "package" testing model, in which other team members such as programmers, artists, and animators wrote code all day, which would "build" or coalesce overnight (Tr. 171:13-172:17). In this model, QA Testers were organized into one separate, standalone department, where they would then review the completed "builds" the next day to search for issues or otherwise ensure that the items programmed actually functioned as intended (Tr. 172:1-10). However, this process was inefficient because (1) coding and programs would only be checked after a complete day (or more) of work, and thus some programs would

[7] This sub-section refers to QA Testers as a general category, without reference to any specific job classifications, as this is meant as a broad overview of the core functions of individuals performing the role of QA Tester.

be evolving on a flawed foundation, and (2) overnight builds would sometimes "break" or malfunction, causing delays by over a day, as the team would have to wait until the next night for an overnight build to hopefully correct errors (Tr. 172:10-13).

b. Transition to Embedded Testing Model

Particularly after Raven became the Warzone lead studio, it needed to find ways to scale to meet the demands of the live game's monthly releases and continual player feedback (Tr. 55:7-56:18, 175:19-24). Thus, in the Spring of 2021, Raven leadership began contacting other lead Call of Duty studios for guidance on how to improve operations (Tr. 56:12-18, R. Exh. E-10 at 4). Raven's leaders learned that these other lead studios uniformly used an embedded testing model, where instead of being their own department and testing packages of code, the testers sat within a game development department and could test in a local environment in more "real time" as changes to code were being made and had discussions with their counterparts to see how Raven could successfully implement this model (Tr. 56:12-18; 172:17-25). The embedded testing model is an industry best practice used at other gaming companies and significantly more efficient than the "pool" testing model because it "radically streamlin[es]" the production process (Tr. 170:10-23, 172:17-19). Because QA Testers are embedded directly into and working alongside the development teams, the testers do not need to wait for an overnight build process and code can be tested right away, which reduces the process from a day or days to a matter of hours "or sometimes even minutes." (Tr. 173:4-7).

Specifically, William Fine (Senior Director of Production) learned about a potential move towards an embedded testing model at Raven beginning "[a]lmost on day one when [he] started" in the Spring of 2021 (Tr. 170:24-171:1). Martin McBain (Senior Director, Animation) similarly became involved in discussions concerning embedding Raven QA Testers in or about February 2021 (Tr. 689:3-9). Fine's predecessor e-mailed him on April 1, 2021, outlining a proposal to

restructure the QA team, which included a note to "consult with Treyarch [another Call of Duty lead studio] to see how their QA structure works." (Tr. 177:13-15, R. Exh. E-10 at 3-4). After the consultation, Fine confirmed that Treyarch had embedded testing, which he had also seen successfully implemented at his prior video game employers (Tr. 170:10-23, 177:24-178:4). Fine obtained a chart of Treyarch's testing team and its specific assignments to different departments and forwarded this to Raven Studio Head Brian Raffel (R. Exh. E-10 at 1-2).

Human Resources Business Partner John Obligato also recalled attending meetings in June 2021 about Raven's planned transition to the embedded testing model [Tr. 75:1-3, 90:24-91:16], to "radically streamlin[e]" the QA testing process at Raven [Tr. 172:17-173:3]. Thus, beginning in early December 2021 Raven converted QA testers from temporary contract employees to full-time employees, as Raven "wanted to focus the testers at Raven to be embedded testers." (Tr. 71:16). After preparing all of the background logistics, including determining the number of QA testers needed within each department and the appropriate department assignments, Raven leadership officially announced the plan to transition to the embedded testing model on January 24, 2022 (Tr. 148:15-20). The transition to the embedded tester roles became effective on January 31, 2022 (Tr. 148:8-14).[8]

Now, the **Embedded QA Testers** report directly to, and receive their daily assignments from, their embedded department supervisors (Tr. 91:22-25, 433:10-13, 436:9-13, 439:4-7, 704:8-15, 708:6-14, 716:2-8, 917:4-13, R. Exh. E-19). In contrast, QA Manager Robert Clark is responsible for administrative issues, such as requesting time off and completing **Embedded QA**

[8] Non-supervisory roles that were previously in the QA Department (prior to Raven's transition to the embedded testing model) fall within the Job Profile Names of (1) QA Functional Tester I; (2) QA Functional Tester I; (3) QA Functional Tester III; and (4) QA Functional Tester IV. All four of these Job Profile Names currently correspond with the Business Card Title of "Embedded Tester." Within the embedded testing model, the studio has also created two advanced roles to assist with QA needs. The Job Profile Names for these 2 new roles are QA Engineer and QA Engineer II, and their corresponding Business Card Titles are Dev. Support Tech and Dev. Support II (R. Exh. E-6A). These new roles require a higher skillset than any QA roles within the prior "pool" testing model.

Testers' performance reviews, with significant input from department supervisors (Tr. 91:19-22, 433:25-434:12, 436:14-18, 731:10-25).

2. ***Animation Department***

The Animation Department is responsible for creating all of the animation in the game—cinematic narrative scenes, all of the characters (friendly or enemy), guns, weapons, and other gadgets (Tr. 652:17-25). Anything that is animated in the video game goes through the Animation Department (*Id.*). There are approximately 44 employees in the Animation Department and all employees ultimately report to the Senior Director of Animation, Martin McBain (Tr. 654:11-17; R. Exh. E-1 at 9). McBain reports to Studio Head Brian Raffel (R. Exh. E-1 at 2). The Animation Department is involved in every stage of game development (Tr. 678:10-17). For example, in the Concept and Pre-Production Phases, the Animation Department will utilize its motion capture technology to act out particular scenes, allowing the team to visualize how scenes should look and what would be required for production (Tr. 681:22-682-24, 684:1-8). During the Production Phase, animation employees begin creating content—they block out scenes, build rigs for characters, and then import that content into the game for testing (Tr. 684:17-685:20). In the Alpha and Beta Phases, the Animation Department continues to develop and refine the scenes and necessary animation and import those materials, in near-final condition, into the game (Tr. 686:11-687:10). The Launch and Post-Launch Phases are particularly important for Warzone, as the Animation Department is constantly responding to player feedback and updating animation that will be rolled out in patch updates (Tr. 688:5-16).

a. Animator

(1) *Job Duties*

The Job Profile name "Animator" is the mid-level classification, and there are multiple levels of Animator: Junior Animator, Associate Animator, Animator, Expert Animator, and

Senior Animator (Tr. 735:21-25; E-1 at 9). Animators are responsible for animating all of the assets in the game, including characters, vehicles, weapons, environments, and faces (Tr. 735:12-20; R. Exh. E-2 at 61-62, 92-93, 122-24). The levels vary based on an individual employee's experience (Tr. 736:12-17). The Business Card Titles[9] assigned to the various Animator levels are:

- Junior Animator: Junior Technical Animator.
- Associate Animator: Assc. Animator, Assc. Technical Animator, Assc. Weapons Animator, Associate Animator.
- Animator: Animator, Mid Level Animator, Technical Animator, View Model (Weapons) Animator.
- Expert Animator: Senior Motion Capture Manager.
- Senior Animator: Senior Facial Animator, Senior Gameplay Animator, Senior Technical Animator, Sr. AI Animator, Sr. MP Animator.

(R. Exh. E-6, E-6A).

(2) ***Interaction with Other Employees***

Because Animators work on every aspect of the animation of a video game, Animators work closely and extensively with Animation Department employees, as well as employees throughout the studio—including Art, Audio, Design, Production, and Engineering (Tr. 737:1-10). For example, Animators working on facial features will collaborate, through "very careful coordination," with Riggers to align facial movements and create the controllers necessary to

[9] Employees at Raven Software have both a "Job Profile" and a "Business Card title" (R. Exh. E-6A). The Job Profile is set by Activision and broadly refers to where the classification fits within Activision (Tr. 76:16-21, 77:13-16). Business Card titles refer to the specific area within a department that the employee works, and one Job Profile may have employees with several different Business Card titles (Tr. 76:22-77:4). For example, "you can have a weapons artists or prop artists or environmental artists [as Business Card titles], but they are all technically artists as their [J]ob [P]rofile" (Tr. 77:2-4).

animate life-like expressions (Tr. 673:24-674:2). As discussed below, Animators also work closely with **Embedded QA Testers** throughout the production process, including ensuring that all environmental elements, weapons, and facial features function and appear properly (Tr. 667:710, 670:8-10, 671:6-8). This can total "hundreds" of animations for a single weapon (Tr. 698:20-22).

Animators collaborate with the Art Department to ensure that the vehicles, weapons, and characters being animated accurately reflect what the Artists created (Tr. 664:4-7, 666:20-23, 676:16-18). Animators also regularly interact with the Audio Department, including "working incredibly in sync with the audio voice files and to ensure that the whole experience, whole visual impression of facial animation works and feels believable." (Tr. 671:13-16).

Animators also collaborate with the Design Department. Character Animators, for example, "work[] very closely with [designers] to ensure that animation and scenes we're creating work and meet the needs of what designers [have developed for game levels]." (Tr. 664:8-10). Weapons Animators also work closely with Systems Designers "to ensure that as we're updating these weapons into the game that they are all balanced together; that one weapon feels balanced against another weapon." (Tr. 666:23-667:2). Animators must coordinate with the Production Department to, among other things, align their schedules so that Animators can anticipate new weapons to be animated (Tr. 667:3-6, 673:9-11). Finally, Animators work with Engineers to run simulations on clothing or hair to define parameters on how those features will move in the game (Tr. 718:2-6).

b. Motion Capture Technician

(1) *Job Duties*

Motion Capture Technicians utilize a motion capture stage at the Raven studio to plan out, direct, and capture live-action performances from actors, which are then input throughout

the game—via long cinematics or smaller vignettes (Tr. 673:19-647:3; R. Exh. E-2 at 113-14, 172-73, 183-84). This position has multiple levels that include: Associate Motion Capture Technician, Motion Capture Technician, and Expert Motion Capture Technician (Tr. 738:15-21; R. Exh. E-1 at 9). Akin to Animators, the level of Motion Capture Technician varies based on their level of experience (Tr. 738:22-15). The Business Card Titles assigned to the various Motion Capture Technician levels are:

- Associate Motion Capture Technician: Associate MoCap Technician.
- Motion Capture Technician: Motion Capture Technician.
- Expert Motion Capture Technician: Senior Motion Capture Manager.

(R. Exh. E-6).

(2) ***Interaction with Other Employees***

Motion Capture Technicians have a "close relationship" with **Embedded QA Testers** and other employees from numerous departments (Tr. 677:12-16). Because it is "very costly to go back and [re-shoot live-action scenes]," Motion Capture Technicians must "ensure we're in a tight position, tight organization" with all departments (Tr. 677:16-18). Motion Capture Technicians work with the **Embedded QA Tester** in the motion capture department to set up the stage, support the shoots, and even participate as background characters in scenes (Tr. 674:6-14, 675:2-8, 17-25).

Often, live shoots require the incorporation of dialogue recordings, so Motion Capture Technicians "work closely with the [A]udio [D]epartment" to "ensure we have those audio files as part of that performance." (Tr. 676:10-14). Motion Capture Technicians also collaborate with Artists when replicating the environment for the scenes that will be shot (Tr. 676:14-18). The Production Department supports Motion Capture Technicians through coordinating all elements

of the shoot, including actors, support teams, and aligning the necessary assets (Tr. 676:25-677:10). Finally, Motion Capture Technicians regularly work closely with multiple classifications in the Design Department. "[M]otion capture requires close working with our writers," meaning Motion Capture Technicians work with Narrative Designers to understand the scenes and moments that will be captured (Tr. 676:6-9). Motion Capture Technicians also coordinate with Designers "to ensure that the performance that we're shooting match the [D]esigner's interpretation of the scenes." (Tr. 677:10-13).

c. Rigger

(1) ***Job Duties***

The Job Profile name "Rigger" is associated with the following Business Card Titles: Rigging Animator and Technical Animator (R. Exh. E-6). All models, such as weapons, vehicles, and characters, must be animated—but Animators do not animate the models directly (Tr. 700:23-701:5). Instead, Riggers create "controllers," or separate attachments that are applied to each individual moving part of a model, which the Animators then animate to give the model the appearance of motion (Tr. 701:6-13). On a vehicle for example, Riggers create controllers for the vehicle's wheels, body, and antenna, so that those sections may later be animated to demonstrate motion (*Id.*). For a weapon, Riggers create controllers for the body of the gun, the clip where the ammunition is held, the sliding piece that ejects a bullet when the gun is fired, and where the character's finger pulls the trigger (Tr. 701:20-702:12).

(2) ***Interaction with Other Employees***

Within the Animation Department, Riggers work extensively with both Animators and **Embedded QA Testers** (Tr. 699:6-17, 700:23-25, 704:12-17). Specifically, Riggers create the controllers that Animators then animate, so the two classifications work closely to ensure that the model (e.g., character, vehicle, or weapon) has the proper controllers so that it can then be

animated to move in a realistic manner (Tr. 702:3-12). Riggers work with the **Embedded QA Testers**, using the Animation Department's Maya application, to ensure that the controllers are working correctly, including properly connecting all of the pieces of the model (which can be many; *see* Tr. 698:20-22), so that the models can then be sent to Animators (Tr. 699:6-17, 705:3-8).

Riggers also work with Artists on creating the correct controllers that will bring their drawings to life (Tr. 703:25-704:3). Indeed, CWA counsel succinctly summarized the interplay between Riggers and the Art Department: Artists create a character's hand, Riggers create the controllers that will allow the hand to move, and Animators make the hand move in certain ways (*Id.*).

d. Video Editor

(1) ***Job Duties***

The Job Profile name "Video Editor" is associated with the Business Card Title "Multimedia Specialist." (R. Exh. E-6). Video Editors are responsible for capturing and editing graphical content in video games (Tr. 741:5-14; R. Exh. E-2 at 94). These employees also create content for promotional videos used in video game trailers or shared on social media (Tr. 742:5-15; R. Exh. E-2 at 94). There is also a higher-level Video Editor position, with a Job Profile Name of "Senior Video Editor" and corresponding Business Card Title of Senior Multimedia Specialist (R. Exh. E-6A). As with other positions, levels are assigned based on an employee's level of experience (Tr. 742:16-743:6).

(2) ***Interaction with Other Employees***

Video Editors work closely with the Animation and Design Departments, particularly during the Concept stage of the development process (Tr. 741:14-17; R. Exh. E-2 at 94). During this phase, Video Editors work with Designers and Animators to create a "proof" of the game—

or a presentation of what the game will look like (Tr. 741:17-20). These presentations may include images or motion graphics, so Video Editors "work close[ly] with our creative teams to ensure that those presentations [] have all the assets and content needed to be presentable and understood at executive level." (Tr. 741:20-742:4). Video Editors also "work very, very closely with **Embedded QAs**" in the Animation Department to ensure that the requisite graphics are properly captured and placed into the games (Tr. 716:9-23) (emphasis added).

e. Animation Embedded QA Tester

(1) ***Job Duties***

Currently, there are three **Embedded QA Testers** in the Animation Department (Tr. 691:24-692:1; R. Exhs. E-18, E-19). They are responsible for many animation-related duties:

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Q. Okay. Can you tell me in more detail what Mr. Sheggeby's day-to-day responsibilities are as a QA tester embedded within the animation department?

A. So Elijah is working with weapons team, and that team is responsible for creating all the animation that goes into weapons and goes into the game and work on the model of that weapon and with all the systems that drive those animations and that weapon in the game space. Elijah's role is now that he is embedded within the team he is now attending stand-ups and attending weekly team meetings. He is included in the group e-mails, Slack conversations, everything that we would expect somebody who is part of that team to be attending and involved and included in those conversations. As we update and create new animations into the game and we're in the process of discussing and establishing those pipelines, again, he is part of, as I said, with everybody else part of those discussions. And we will be working close with him as we put his content into the game and ensure each of those animations, which for a weapon can often be hundreds of animations per weapon, each of those animations need to ensure that they are working correctly alongside each other animation. So we make

Embedded QA Testers also "support all program preparation leading up to [a] motion capture shoot," attend motion capture shoots "to ensure once shots capture all that data[,] that data that meets the quality requirements that that data needs to go through." (Tr. 708:7-20). Finally, **Embedded QA Testers** are "involved in every update, every iteration being made to both any cinematic or narrative scene, or it could be AI animation . . . there are thousands, tens of thousands of pieces of animation that need to be checked and approved and signed off and ensure those animation[s] work in accordance with the game design itself." (Tr. 714:8-16).

Prior to the embedding, two of the three **Embedded QA Testers** had worked closely with the Animation Department (Tr. 691:18-23; E-18).

McBain further testified that he intends for **Embedded QA Testers** to expand their development responsibilities once the embedding model has been fully implemented. For example, **Embedded QA Testers** will be expected to learn how the department creates content so that the **Embedded QA Testers** can begin to work on cinematic development (such as when to fade in and out of scenes) and video editing (Tr. 748:6-19, 774:12-775:1). Moving forward, **Embedded QA Testers** will also develop the system and mechanical drive animation skills necessary to work with Systems Designers to adjust any balancing issues found in the game's weapons (Tr. 706:23-707:7).

(2) ***Interaction with Other Employees***

As discussed above, **Embedded QA Testers** interact with employees throughout the Animation Department (Tr. 709:13-16). **Embedded QA Testers** work with Animators to ensure that all of the animations, which can total more than 100 separate animations per weapon, are functioning properly, and working independently alongside other animations (Tr. 698:19-699:3, 716:9-12). **Embedded QA Testers** work with Riggers to test controllers to make sure that the weapons, vehicles, and characters are working correctly and thoroughly testing controllers in the

pipeline "before we roll them out to the department so the department isn't receiving a tool that maybe isn't work correctly and cause further problems down the road." (Tr. 699:6-13, 709:4-12). The Motion Capture team relies on **Embedded QA Testers** to support performance preparations, ensure that the scenes captured meet quality requirements, and even participate in scenes as background characters (Tr. 675:2-8, 708:14-22).

Animation **Embedded QA Testers** are not limited only to work in the Animation Department, as these **Embedded QA Testers** work with employees in numerous other departments. For example, **Embedded QA Testers** work with the Production Department to coordinate the schedules, people, and assets needed to perform a motion capture shoot (Tr. 709:17-710:1). **Embedded QA Testers** also work with Artists to ensure that the Animation Department has the latest versions of game maps, allowing the Motion Capture team to then accurately arrange backgrounds and objects in scenes (Tr. 710:2-14). Members of the Audio Department and **Embedded QA Testers** collaborate to ensure that Animators and Motion Capture Technicians are utilizing the proper audio files—as "[c]ontent changes daily." (Tr. 717:16-23). Coordination between **Embedded QA Testers** and the Audio Department is further critical for weapons animation because, for example the "sound effect needs to play alongside [the muzzle flash,] so there is a careful process of close synchronization between all these things triggering the game and they all need to work together." (Tr. 706:10-19). **Embedded QA Testers** further work with Systems Designers to report any adjustments needed on the game's weapons "to ensure as we introduce a new weapon that that feels correct and balanced and fair against hundreds of other weapons we have in a game." (Tr. 706:19-707:2). Finally, **Embedded QA Testers** work with Engineers on the parameters and systems that are implemented to control content, including flowing hair or clothing (Tr. 718:1-14).

3. ***Art Department***

Regardless of specialization or level, Artists generally are responsible for crafting compelling visual narratives that reinforce and enhance the game's setting, story, and gameplay elements; building realistic detailed 3D environments from photo reference and concept; assisting in troubleshooting artistic and technical issues; and creating and integrating visual assets into the game (R. Exh. E-2 at 11-12, 87-88, 111-12; Tr. 350:17-352:18). Once a vision for the video game has been developed in the Concept Phase, the Art Department develops prototypes and a "concept piece" to display those ideas (Tr. 351:3-6). The Art Department works with Design and Engineering to develop the visual style that will guide the assignments and responsibilities moving forward (Tr. 351:9-13). This visual style is further developed in the Production phase, and it can take years to get through this phase (Tr. 351:14-18). During the Alpha phase, Artists continue to develop the assets and artistry for the video game and begin to test and validate their work for performance and efficiency (Tr. 351:19-25). Through the Beta, Launch and Post-Release phases, the Art Department is focused on efficiency, fixing bugs, and adjusting assets and art during gameplay as needed (Tr. 351:22-352:18). All positions in the Art Department, including the three **Embedded QA Testers**, work together to create the visual presence in the video game world (Tr. 350:7-12).

a. Artist

(1) ***Job Duties***

There are multiple levels of the Artist position. Regardless of specialization or level, Artists generally are responsible for crafting compelling visual narratives that reinforce and enhance the game's setting, story, and gameplay elements; building realistic detailed 3D environments of the entire game world from photo reference and concept; assisting in

troubleshooting artistic and technical issues; and creating and integrating visual assets into the game (R. Exh. E-2 at 11-12, 87-88, 111-12; *see also* Tr. 359-360).

The Job Profile Name "Artist" is the mid-level classification, having common job duties with the following Job Profile Names: Entry Artist, Associate Artist, Senior Artist, and Expert Artist (Tr. 365-366). Individuals in each Artist level classification generally perform the same core job duties. The "Entry," "Associate," "Senior," and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (Tr. 366; R. Exh. E-2).

The Entry Artist is the junior level classification (Tr. 365:7-8). The Associate Artist is the second level classification (Tr. 365:8-9), and individuals entering this position are generally expected[10] to have two years of experience in developing art for games (R. Exh. E-2 at 111). The mid-level position of Artist typically requires at least three years of experience (R. Exh. E-2 at 11). The Senior Artist is the fourth tier of the Artist position, from which point progression then diverges either into a management track or an individual contributor track (Tr. 365:10-11). If an employee chooses to proceed in the individual contributor track, they would progress into an Expert Artist position which typically requires five years of experience in developing art for games (Tr. 365:16-22; R. Exh. E-2 at 87-88).

[10] As used here, and subsequently, the hearing testimony showed that the concept of "requirements" or "expectations" with regard to years of experience, technical skills, soft skills, or any other expectations, whether set forth in a job description or otherwise, actually refers to the ideal qualifications rather than a minimum, mandatory requirement. As explained by David Pellas, "whenever you talk about minimum requirements… looking at this holistically is what we typically do. We'll look at what do we want, right, what is the perfect candidate for this role. And that's someone who can check all the boxes or checks all the bullet points, for example. *But the reality is like nobody does that. So when you look at this, if you're framing it as [a] minimum requirement and we have to get all of these, we wouldn't have any [employees] at the studio.* So we're looking at the whole person and what they bring to the studio, both technical skill as well as culturally… So whenever I look at this, first is I say one total years, yes, I would want that, right. But if a stunning candidate comes in and they have got right out of school, but they blow you away with their interview or something else, we wouldn't kick them out of the door…" (Tr. 494-495) (emphasis added).

For all levels of classifications, the term "Artist" is a general term to which an area of specialization within the field of art is typically attached (Tr. 358:22-359:5). Employees are assigned and focus on a specialization (Tr. 358:20–359:5). Specialization is generally reflected in the various Business Card Titles assigned under each Job Profile Name (R. Exhs. E-6 and E-6A). The specializations reflected in the Business Card Titles assigned to the varying levels of the Artist Job Profile Name include: Artist, Characters; Environment Artist; Integration Artist; Prop Artist; Foliage Artist; and Artist, Modeler (R. Exh. E-6).

A Character Artist creates the actual interactive entities in the video game world, whether monsters, dogs, or humanoids (Tr. 383:12-17). An Environment Artist creates the environmental features of the game, i.e., "the world that you see in the game" (Tr. 359:9-17; R. Exh. E-6). Environment Artists work with Artists that create assets (i.e., key visual elements)—such as the Prop Artist, Character Artist, and Foliage Artist—to incorporate those assets into the world seen in the video game and make them look great (Tr. 359:23-360:10). An Integration Artist is responsible for quality checking the assets originally designed and created by other companies outside of Raven studio and incorporating those assets into the video game (Tr. 389:19-399:6). A Prop Artist creates models for all the props in the game world (Tr. 379:16-22). For example, if playing baseball in the game, Prop Artists would create the baseball bat, mitt, ball, and anything else that exists in the world usable by characters (*Id.*). A Foliage Artist specializes in creating the foliage in the world, such as grass, leaves, ferns, and trees, and ensures it looks as realistic as possible (Tr. 401:20-25). Finally, the Artist, Modeler (also referred to as the Model Artist) is a similar position as the Prop Artist in that it creates the models and assets in the world. The Artist, Modeler may specialize in certain assets, such as vehicles (Tr. 397:22-398:5). The Character, Prop, and Model Artists are managed by the Lead Asset Artists (Tr. 385:1-8, 381:11-

17, 398:14-17). Environment and Foliage Artists are managed by a Lead Environment Artist (Tr. 364:5-7, 403:1-2). Integration Artists are managed by the "Outsource Manager," or the Senior Manager of Art Outsourcing within the Production Department, who then reports to William Fine (Tr. 401:1-11).

(2) ***Interaction with Other Employees***

Artists collaborate with employees outside the Art Department. Artists obviously work with the content provided by Creative Directors, Designers, Engineers, Artists, Producers, and Animators to then translate and deliver visual content for the game (R. Exh. E-2 at 11). Artists' work in developing visual assets for the game must be done in close partnership with employees in these other departments, understanding how the work performed by each department impacts and interacts with their work as Artists (Tr. 361:5-18). Artists work with these other departments "[e]very day. They could not do their job without that [collaboration]" (Tr. 362:7-8). As noted above, some Artists are actually managed by the Production Department.

Unsurprisingly, Artists also work closely with **Embedded QA Testers** (Tr. 362:13-363:2, 373:14-374:6, 384:8-20, 398:9-11, 399:19-400:20, 402:18-20). While the frequency of direct interaction between Artists and **Embedded QA Testers** may vary from daily to bi-weekly depending upon the game development stage, as well as upon the Artist's area of specialization, Artists are dependent on a daily basis upon the work of **Embedded QA Testers** in the identification of, and validation of fixes to, any issues with the art assets they create and integrate into the game (*Id.*). Some of these issues are specified below.

b. Concept Artist

(1) *Job Duties*

There are multiple levels of the Concept Artist position. Regardless of level, Concept Artists are generally responsible for providing the inspirational concept and reference art behind the visuals and experiences within the game (R. Exh. E-2 at 7, 10; Tr. 368:1-21).

The Job Profile Name "Concept Artist" is the mid-level classification, and is a position which shares common job duties with the following Job Profile Names: Entry Concept Artist, Associate Concept Artist, Senior Concept Artist, and Expert Concept Artist. As with other ranked positions within the Art Department, the "Entry," "Associate," Senior," and "Expert" prefixes denote the years of experience, level or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (Tr. 366:6-10; R. Exh. E-2 at 7-8, 9-10, 149-151, 161-163).

The Entry Concept Artist is the junior level classification for this position. The Associate Concept Artist is the second level classification, and is generally expected to have one or more years of experience in working in a concept art capacity (R. Exh. E-2 at 7-8). The next progressive level position of Concept Artist typically requires at least three years of experience (R. Exh. E-2 at 9-10). The Senior Concept Artist is the fourth tier of the Concept Artist position, which generally requires five or more years of experience in developing art for games generally (R. Exh. E-2 at 149-151). The Expert Concept Artist position is the highest tier in this category of Job Profiles, and generally requires three or more years working in a concept artist capacity, ideally in conjunction with five or more years of experience with a major (AAA) video game publisher (R. Exh. E-2 at 161-163).

(2) ***Interaction with Other Employees***

Concept Artists frequently work with the asset artists to create a visual for the game (Tr. 367:23-368:21). Specifically, Concept Artists collaborate with Art Directors, Creative Directors, Designers, and Artists to envision and refine visual content for the game (R. Exh. E-2 at 9, 162; Tr. 369:1-19). Concept Artists work collaboratively with the entire development team to contribute creative and original ideas toward all aspects of game production and development (R. Exh. E-2 at 7, 9, 149, 162). During the Concept stage of game development, ideas are shared and discussed by Raven employees from all disciplines, with the heavy involvement of Concept Artists (Tr. 350:23-351:2). Certain ideas are selected to progress into the Pre-Production stage, Concept Artists further develop them into prototypes, concept pieces, concept art drawings, and digital paintings during this phase (Tr. 351:3-7). As Concept Artists flesh out a vision for the video game, they provide inspiration pieces to the asset artist responsible for recreating that visual in the game (*Id*.)

Concept Artists primarily work with **Embedded QA Testers** during the Concept stage, and the Pre-Production stage (Tr. 370:4-6). Here, an **Embedded QA Tester** provides an idea for the video game, and, if adopted by the development team, the Concept Artist coordinates with that **Embedded QA Tester** to create a visual representation of that idea (Tr. 370:4-16).[11] Not uncommonly, **Embedded QA Testers** originate ideas that the Studio decides to pursue from the Concept stage into the Pre-Production stage (Tr. 370:7-8). In such instances, a team is formed to "prove out" the idea (Tr. 351:6). That team would include the **Embedded QA Tester** who

[11] Concept Artists already work closely with, and will continue to work closely with, **Embedded QA Testers** at certain stages of the game development process, particularly at the Concept stage and Pre-Production stage (Tr. 350-351, 370). However, as of the date of the hearing in this matter, none of the **Embedded QA Testers** within the Art Department have been specifically assigned to work for Concept Artists (Tr. 498). This delay is because Raven is still identifying the areas of interest and expertise of the **Embedded QA Testers** within the Art Department (*Id*.). Regular pairings of Concept Artists and **Embedded QA Testers** will naturally come later (*Id*.).

generated the idea as well as a Concept Artist to provide art (Tr. 370:8-16). Significant coordination and communication would occur between the **Embedded QA Tester** and Concept Artist as they develop a visual representation of the idea during the Pre-Production stage (*Id.*).

c. FX Artist

(1) ***Job Duties***

There are multiple levels of the FX Artist position. Regardless of level, FX Artists are generally responsible for the creation of the art asset that is associated with an event, such as an explosion, rain, or other visual elements of the game (Tr. 390:12-17). FX Artists create visual effects using proprietary real time particle systems, and are responsible for identifying and addressing technical challenges throughout the process of creating such visuals (R. Exh. E-2 at 16, 164).

The Job Profile Name "FX Artist" is also referred to as "VFX Artist" (Tr. 393:11-15; R. Exh. E-2 at 164-165). The position shares common job duties with the following Job Profile Names: FX Artist, Senior FX Artist, and Expert FX Artist. As with other ranked Art Department positions, the "Senior" and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (*See* Tr. 366:6-10; R. Exh. E-2 at 16, 128-129, 164-165). The FX Artist is the lowest classification level of this position. The Senior FX Artist is the second-level classification, and individuals entering this position are generally expected to have two to three years of experience in visual effects development (R. Exh. E-2 at 16). The Expert FX Artist is the third and highest tier of the FX Artist position, and ideally will have at least seven years of visual effects development experience (R. Exh. E-2 at 164). FX Artists are managed by the Lead Artist (Tr. 392:22-23). The Lead Artist reports to the Senior VFX Artist, who reports to David Pellas (Tr. 392:23-25).

(2) ***Interaction with Other Employees***

FX Artists work with Lighting Artists, Environment Artists, Technical Artists, and Art Directors every day during their work on such visual effects (Tr. 391:1-4). FX Artists must communicate effectively with employees across multiple departments to perform the essential functions of their position (R. Exh. E-2 at 165). For example, FX Artists also work closely with Creative Directors, Level Designers, Production, Animation, and Engineering on a daily basis (R. Exh. E-2 at 162, 164; Tr. 391:1-4).

FX Artists create visual effects using proprietary real-time particle systems, and are responsible for identifying and addressing technical challenges throughout the process of creating such visuals, in a quality control function (R. Exh. E-2 at 16, 164). Here, unsurprisingly, FX Artists work closely with **Embedded QA Testers** at various stages of the production process, such as the Production, Alpha, Beta, Launch, and Post-Launch phases (Tr. 391:24-392:1-5). During this time, FX Artists and **Embedded QA Testers** work together to make sure that the visual effects do not "tank the memory" of a player's computer processor or cause a lag in the game (Tr. 391:12-23). When those issues occur, the **Embedded QA Testers** identify when and where it occurred (*Id*.)

Given the complexity inherent in modern visual effects, numerous issues can arise here requiring communication and collaboration between an FX Artist and an **Embedded QA Tester** to identify and address such issues (Tr. 391:12-23). For example, FX Artists and **Embedded QA Testers** work to make sure there are no explosion-related "visual artifacts" in the game if the player did not actually set off an explosion (*Id*.). As the uncontested testimony recounted (Tr. 392:6-14):

> It's not just the way that the visual effect asset was created, like the explosion of fire was created. It could have artifacts that come through that or bugs associated with that visual effect caused by something completely different that another team

> put into the game that has strange interactions that happen in the code that the tester would be vital in figuring out where that connection is, what caused the artifact to happen, and help [the development team] work through that.

d. Lighting Artist

(1) ***Job Duties***

There are multiple levels of the Lighting Artist Position. But, regardless of level, Lighting Artists are generally responsible for creating and implementing lighting visuals within the game (Tr. 385:13-19; R. Exh. E-2 at 20, 84-86, 169-171, 185-187). As noted previously, the visual style of light, the moon, or even ambient lighting within the game world is handled by Lighting Artists (Tr. 385:20-23).

The Job Profile Name "Lighting Artist" is a position which shares common job duties with the following Job Profile Names: Associate Lighting Artist, Senior Lighting Artist, and Expert Lighting Artist. As with other ranked positions within the Art Department, the "Associate," "Senior," and "Expert" prefixes denote the years of experience, level or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (Tr. 366:6-10). Lighting Artists are managed by the Lead Lighting Artist (Tr. 387:20-21). The Lead Lighting Artist reports to the Art Manager who then reports to David Pellas (Tr. 387:21-22).

(2) ***Interaction with Other Employees***

Lighting Artists must work closely with the Environment Art team, Art Director, Creative Director, Level Design, Production, Technical Artists and Engineering to properly execute their role in the game development process (Tr. 386:7-9). "Lighting is a simple science but [a] delicate art" [Tr. 386:17] and requires Lighting Artists to communicate regularly with other departments to understand how lighting within a scene impacts other areas of the game [Tr. 386:22-387:9].

Lighting in a game takes up a lot of memory (for example, imagine programming the interplay of shadows from multiple light sources on constantly moving game objects and characters), and too much lighting can break a game (Tr. 386:14-21). When lighting does cause performance issues, Lighting Artists work with **Embedded QA Testers** to determine where the breakages are in the game and how the game is breaking—i.e., whether the lighting is causing the entire video game to break or whether a specific light is not turning on (Tr. 387:2-9). As the uncontradicted testimony recounted:

> You can overdo how many lights are in a scene and the more lights that you put into the world, the more it costs memory-wise. And it can slow down the game, it can have adverse effects… And working with the [**Embedded QA T]esters**, we need to know where the… breakages are and how it's breaking… So a lot of that partnership happens with our testers.

(Tr. 386:18-387:9) (emphasis added). This interaction with **Embedded QA Testers** could occur weekly in the early stages of development and can increase to daily when there are more bugs to resolve (Tr. 387:12-15).[12]

e. UI Artist

(1) ***Job Duties***

There are multiple levels of the UI Artist position. Regardless of level, UI Artists are generally responsible for creating the user interface in the video game (Tr. 387:24-388:8; R. Exh. E-2 at 194-196, 191-192). For example, this includes creating the art for the entry menu to begin playing the game, or an ammunition counter or health bar once inside of the video game (*Id*.).

[12] Lighting Artists already work closely with, and will continue to work closely with, QA Functional Testers throughout the game development process (Tr. 387:10-15). However, as of the date of the hearing in this matter, none of the QA Functional Testers that have been embedded within the Art Department have been specifically assigned to work for specific Lighting Artists (Tr. 599:13-15). However, under the embedded testing model, it is only a matter of time before these specific designations occur.

The UI Artist position shares common job duties with the following Job Profile names: Entry UI Artist; UI Artist; and UI Artist, Senior. As with other ranked positions within the Art Department, the "Entry" and "Senior" positions denotes the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency. The UI Artist is managed by the Lead UX Designer (Tr. 389:25-390:1). It is not uncommon for a Creative Director, Art Director, or Production to also assign tasks (Tr. 390:4-9).

(2) ***Interaction with Other Employees***

UI Artists interact with Art Directors, UI Engineering, UX Design, and Production every day in creating the user interface visuals for the video game (Tr. 388:11-14). When there are performance issues with the user interfaces (for example, a player's character may have a "heads up display" of health, ammunition, "minimaps," text, or other information), UI Artists will partner with **Embedded QA Testers** to figure out whether the bug is in the code for the visual, the design of the space, or in the actual art itself (Tr. 388:22-389:10). This interaction between UI Artists and **Embedded QA Testers** can range from multiple times a week to daily during the Production, Alpha, Beta, and Post-Launch phases (Tr. 389:13-21).

f. Technical Artist

(1) ***Job Duties***

There are multiple levels of the Technical Artist position. Regardless of level, Technical Artists are responsible for *what is essentially a quality control function*: ensuring that all aspects of the video game work and helping make the video games more efficient (Tr. 376:15-17). Technical Artists focus on the tools and procedures used by the studio to develop innovative solutions to resolve inefficiencies (Tr. 376:17-23; R. Exh. E-2 at 17-18, 13-14).

The Technical Artist positions shares common job duties with the following Job Profile names: Entry Technical Artist, Associate Technical Artist, Technical Artist, and Senior Technical Artist. As with other ranked positions within the Art Department, the "Entry" and "Senior" prefixes denote the years of experiences, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (Tr. 366:6-10). Technical Artists are managed by the Senior Lead Tech Artist (Tr. 379:4-6). The Senior Lead Tech Artist reports to the Art Manager who then report to David Pellas (Tr. 379:6-7). It is not uncommon for Production or the Creative Director to assign tasks to the Technical Artists as well (Tr. 379:10-14).

(2) ***Interaction with Other Employees***

Technical Artists work with other Artists, Engineers, Design, and Production every day to help make the video game more efficient (Tr. 377:13-19). Technical Artists primarily collaborate with **Embedded QA Testers** during the Alpha, Beta, and Post-Launch phases of video game development when the team is dealing with the highest bug counts and more challenging performance issues (Tr. 378:12-19). During this time, Technical Artists partner with **Embedded QA Testers** to test a newly created or updated tool to ensure the tool is operating properly (Tr. 377:22-378:5). Technical Artists also partner with **Embedded QA Testers** to resolve performance issues, memory leaks and issues, and string issues[13] (Tr. 378:6-9).

g. Photogrammetry Artist

(1) ***Job Duties***

The Photogrammetry Artist is skilled in the practice of photogrammetry—the process of making key objects and maps using photographic images (Tr. 371:19-372:5). The

[13] The transcript erroneously refers to "stringer issues" instead of "string issues." A "string" is traditionally a sequence of characters, either as a literal constant or as some kind of variable.

Photogrammetry Artists can extrapolate the data from the images to assist the Artists in creating those photographed objects in the video game (Tr. 372:5-18). Photogrammetry Artists are managed by the Lead Photogrammetry Artist (Tr. 375:20-23). The Lead Photogrammetry Artist reports to the Senior Lead Tech Artist (Tr. 375:23-24). It is not uncommon for Production or the Creative Director to assign tasks as well (Tr. 376:6-8).

(2) ***Interaction with Other Employees***

Photogrammetry Artists work with Designers, Engineering, Production, and its Art department weekly to perform photogrammetry (Tr. 372:21-373:6). Like applied lighting, applied photogrammetry can cause many bugs in the game due to the amount of memory the images require (Tr. 373:18-374:6). Therefore, Photogrammetry Artists frequently work with **Embedded QA Testers** on identified bugs, artifacts (extra, unwanted pixels) and other performance concerns (*Id*.). Photogrammetry Artists start by working with **Embedded QA Testers** every couple of weeks in the early phases of development and move to daily collaboration in the later phases of development when trying to resolve all issues and bugs (Tr. 374:9-13).

h. Principal Artist

(1) ***Job Duties***

Principal Artists are responsible for creating the overall visual direction of the video game production (Tr. 393:20-23). There are two specialized versions of the Principal Artist position—Art Director and Campaign Art Director (Tr. 395:13-16). The Campaign Art Director inspires the process for the work of the Campaign Team (Tr. 395:2-7). Other Art Directors are focused on creating the vision for the specialized teams within the Art Departments (Tr. 395:7-12). Principal Artists are managed directly by David Pellas and also receive assignments from the Creative Directors (Tr. 397:13-15).

(2) ***Interaction with Other Employees***

Principal Artists work with every department in Raven studio every day to guide the visual direction of the product (Tr. 395:21-396:1). Within the Art Department, Principal Artists work with leads and other directors to direct the artistic vision of the video game (Tr. 395:5-12). This creates further interaction. The Art Department will conduct an art review, which involves gathering feedback and focusing on different visual pieces of the video game that need improvement (Tr. 396:9-25). An Art Director is involved in every art review along with the Lighting Director, Lighting Artist, Environment Director, Environment Artist, and, obviously the **Embedded QA Testers**, who have been tasked with identifying art problems (*Id*.).

i. Art Embedded QA Tester

(1) ***Job Duties***

As of the date of the hearing, there are three **Embedded QA Testers** within the Art Department that work closely with Artists (Tr. 430:22-25). These are often specific tasks, "focused on performance, validation of issues, fix solves… and then new issues" that may arise relative to the work performed by Artists (Tr. 362:18-23). Within the Art Department, **Embedded QA Testers** are managed by the Lead Artist (Tr. 433:10-13).

(2) ***Interaction with Other Employees***

These **Embedded QA Testers** in the Art Department work with the Environment Artists the most of all the Art positions (Tr. 431:9-11). In doing so, **Embedded QA Testers** focus on the performance of the tools the department is using, memory usage, artifacts, and streamer details (Tr. 431:12-17). The **Embedded QA Testers** report to the Lead Environment Artist (Tr. 431:12-13). The work of the **Embedded QA Tester** is necessarily dependent upon the work of the Artist, and vice versa, as each relies upon the other for the functionality of their work and proper execution their own discreet but closely interwoven tasks (Tr. 431:9-432:5). The

Embedded QA Testers also work with other positions in the Art Department every day (Tr. 432:6-11), as noted throughout this section.

4. ***Audio Department***

Employees in the Audio Department are the creators and visionaries for any sounds that players hear in the video game (Tr. 356:23-24). For example, the Audio Department creates the sound effects from vehicles, explosions, guns firing to all character dialogue (Tr. 356:23-357:2).

a. Associate Dialog Editor

(1) *Job Duties*

The Associate Dialog Editor is akin to an editor for a book (Tr. 423:17-18). The Associate Dialog Editor is responsible for managing and editing the voice over ("VO") lines for the video game to make sure they work and are game ready (Tr. 423:18-424:10; R. Exh. E-2 at 96-97).

(2) *Interaction with Other Employees*

The Associate Dialog Editors works with Design, Engineering, Creative Directors, Game Play Scripters, Production, and other employees in the Audio Department when managing the VO lines for the game (Tr. 424:13-25). The Associate Dialog Editor will also collaborate with **Embedded QA Testers** to identify and resolve bugs or issues with VO lines in the game (Tr. 425:12-21). These interactions vary based on the phase of video game development and increase in frequency to every day during the Production phase (Tr. 425:3-9).

b. Audio Designer

(1) *Job Duties*

There are multiple levels of the Audio Designer position. Regardless of level, Audio Designers are responsible for creating all the sounds within the video game with a goal of making them sound as realistic as possible (Tr. 426:16-427:6). Each sound—whether it be water

gurgling in a stream or a truck rumbling past—requires "a significant nuance based on all of the parameters of the virtual setting." (Tr. 426:22-25).

The Audio Designer positions share common job duties with the following Job Profile names: Associate Audio Designer, Audio Designer, Senior Audio Designer, and Expert Audio Designer. The "Associate," "Senior," and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency (Tr. 430:4-7). Audio Designers are managed by the Senior Lead Audio Designer, who reports directly to Brian Raffel (Tr. 429:9-13). Production or the Creative Director may also provide input on the priority of tasks for the Audio Designers (Tr. 429:16-21).

(2) ***Interaction with Other Employees***

Audio Designers work with other employees within the Audio Department in the creation of the video game's sound effects, as well as Engineering, Design, Creative Directors, and Production (Tr. 427:7-14). When an audio clip is distorted or does not play accurately in the video game, Audio Designers will partner with **Embedded QA Testers** to determine what is happening and what is triggering the issue (Tr. 428:10-14). As a result of being embedded in the Audio Department, the **Embedded QA Tester** would know the needs of the audio team to be able to figure out how to move forward and fix the issue (Tr. 428:13-21.). These interactions vary based on the stage of development (Tr. 427:18). The interactions occur most frequently during the Concept Phase of game development when all employees are working together, as well as in the Pre-Production phase through Post-Launch (Tr. 427:17-24).

c. Audio Embedded QA Tester

(1) *Job Duties*

As of the hearing, there was one **Embedded QA Tester** in the Audio Department (Tr. 437:11-14, 917:1-4). The **Embedded QA Tester** in the Audio Department is primarily responsible for testing and validating the audio in the video game (Tr. 434:17-20). The **Embedded QA Tester** works alongside Audio Designers to identify audio issues before they are fully implemented into the video game, validate those issues, and provide direction to the Audio department through a Jira bug report on what the identified issue is (Tr. 437:17-438:8). The **Embedded QA Tester** reports to the Senior Lead Audio Designer who reports directly to Studio Head Brian Raffel (Tr. 439:4-7).

(2) *Interaction with Other Employees*

As stated above, the **Embedded QA Testers** work most closely with the Audio Designers (Tr. 438:12-13). Outside of the Audio Department, **Embedded QA Testers** also interact with Engineering, Designers, Production, and Creative Directors (Tr. 438:11-15). These interactions are frequent, but vary depending on the phase of development (Tr. 438:23-25). It is important for the **Embedded QA Testers** to understand the job duties of all the positions in the Audio Department to effectively perform their duties (Tr. 439:1-3).

5. ***Design Department***

The positions within the Design Department serve as the "vision bearers" of the video game production. (Tr. 353:6-7). The general role of a Designer "is to be the creative fount" in the implementation and execution of the different experiences and locations in the video game (Tr. 405:15-17). Designers document employees' creative visions during the Concept stage and work with Artists to create a visual representation that accurately reflects that vision (Tr. 353:7-15). During the Pre-Production stage, Designers work with Engineering to code or script

prototypes for the video game (Tr. 353:15-18). During the Production phase, Designers begin "blocking out the game play spaces" by creating shapes in the video game world to represent the game assets Artists will create (Tr. 354:1-7). In the Post-Production/Alpha phase, Designers focus on "timing, bug fixing, polish [and] presentation" (Tr. 354:21-24), part of which involves quality control duties. From the Beta phase through Launch, Designers are focused on continued polishing of the video game (Tr. 354:21-355:5). Finally, during Post-Launch Designers address issues raised by the player community and make adjustments to the map or its design as needed (Tr. 355:5-14).

Similar to the Artists in the Art Department, the term "Designer"[14] is a general term to which an area of specialization within the field of design is typically attached (Tr. 405:11-12). The specializations are described in detail, below. Generally, all Designers, regardless of rank, are responsible for driving the vision of the video game through the implementation and execution of the player experience (Tr. 405:12-17). The core work on this goal is the same across all ranks of Designers (Tr. 407:8-13). As of the hearing, there were three **Embedded QA Testers** in the Design Department (Tr. 434:15-17).

a. Level Designer

(1) *Job Duties*

There are multiple levels of the Level Designer position. Regardless of level, Level Designers all build out the space in the video game (Tr. 411:9-10). After a Designer creates the boxes in the world that are meant to represent, for example, a building, the Level Designer will make the space actually look like what it is meant to represent (Tr. 411:9-17).

[14] The Business Card title for the Game Designer position is "Designer." (Tr. 406:14-22).

The Level Designers share common job duties across the following Job Profile names: Level Designer, Senior Level Designer, and Expert Level Designer (R. Exh. E-2 at 40-42, 33-36, 166-168). The "Senior" and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency. Level Designers report to the Lead Level Designer (Tr. 413:20-22). The Lead Systems Designer reports to the Design Manager, who then reports to David Pellas (*Id*.).

(2) ***Interaction with Other Employees***

Level Designers work with Artists, Production, Animation, and Engineering to build out and create the spaces in the video game world (Tr. 20-24). These interactions occur every day (Tr. 412:2). Level Designers work with **Embedded QA Testers** to test the performance of the game play space and resolve any bugs that pop up in the game play space (Tr. 412:7-10). Additionally, where there is a visual oddity in the world, the Level Designers would work closely with the **Embedded QA Testers** to fix (Tr. 412:7-14). These interactions occur more frequently from the Production to Launch phases, and for Level Designers and **Embedded QA Testers** on the Campaign team, the interactions are even more frequent (Tr. 412:17-21).

b. Narrative Designer

(1) ***Job Duties***

The Narrative Designer is primarily responsible for crafting the story for the video game world and the actual narrative for the game (Tr. 420:25-42:2). For example, if a game is set in 1980, the Narrative Designer determines what is "80's," decides how to tell the story, and concocts the characters (Tr. 421:5-12). Narrative Designers report to the Lead Narrative Designer (Tr. 422:22-23). The Lead Narrative Designer reports to a Design Manager who then reports to David Pellas (Tr. 422:23-25).

(2) ***Interaction with Other Employees***

Narrative Designers work closely with Audio and creative leadership—which includes Animation leads, Design leads, Production leads, and a Narrative Producer—to craft the story and narrative for the video game (Tr. 412:19-20). This interaction occurs every day (Tr. 422:2). Narrative Designers may work with **Embedded QA Testers** in the Concept Phase of game development as well as in play test feedback sessions (Tr. 422:13-17).

c. Systems Designer

(1) ***Job Duties***

There are multiple levels of the Systems Designer position. Regardless of level, Systems Designers work on the underlying systems and features of the video game (Tr. 408:7-8). When a weapon in the video game is overpowered or otherwise doing too much damage during gameplay, the Systems Designer will use tools, coding, or scripting to identify and resolve the issue (Tr. 408:15-22). *This is a quality control function.*

The Systems Designer positions share common job duties with the following Job Profile names: Associate Systems Designer, Systems Designer, and Senior Systems Designer (R. Exh. E-2 at 99-101, 26-28, 29-31). The "Associate" and "Senior" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency. Systems Designers report to the Lead Systems Designer (Tr. 410:21-22). The Lead Systems Designer reports to the Design Manager who then reports to David Pellas (Tr. 410:22-24).

(2) ***Interaction with Other Employees***

Systems Designers work closely with Artists, Engineering, Audio, Animation, Creative Directors, Production, and other Designers in perfecting the underlying systems of the video game (Tr. 408:25-409:8). Specifically, Systems Designers work closely with the UI and UX

teams (*Id.*). These interactions occur very frequently, if not every day (Tr. 409:6-8). Part of the Systems Designers' duties include working on the important Call of Duty "weapon balance" issue to determine if a weapon is overpowered or instead doing too little damage (Tr. 408:7-22). In doing so, the Systems Designer will work with the **Embedded QA Testers** to determine whether the problem is caused by a bug or an issue with the system or coding itself (*Id.*). The Systems Designers work with **Embedded QA Testers** every day (Tr. 409:9-13).

d. UX Designer

(1) ***Job Duties***

There are multiple levels of the UX Designer position.[15] Regardless of level, UX Designers are responsible for making all of the visuals mesh together properly in the game and ensuring the visuals are represented in a concise and clear manner to the player (Tr. 414:6-16). For example, if a player pulls out a weapon and views statistics and other information related to that weapon, it is the UX Designer who determines how to display that information on the screen (Tr. 414:19-24).

The UX Designer positions share common job duties with the following Job Profile names: Associate UX Designer, UX Designer, Senior User Experience Designer, and Expert User Experience Designer (R. Exh. E-2 at 71-73, 24-25, 37-38). The "Associate," "Senior," and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned and expectations with regard to work quality and efficiency. The UX Designer reports to the Lead UX Designer (Tr. 416:1-2). The Lead UX Designer reports to the Senior Lead UX Designer who then reports to David Pellas (Tr. 416:2-4).

[15] UX is short for User Experience (Tr. 414:25-415:2).

(2) ***Interaction with Other Employees***

UX Designers work closely with Artists, Engineering, Creative Directors, Art Directors and Production (Tr. 415:6-9). As stated above, the UX Designer works with the Systems Designer every day when figuring out how to display information on the screen for players (Tr. 415:8-12). The UX Designer also work with an **Embedded QA Tester** every day (Tr. 415:13-17).[16]

e. Design Embedded QA Tester

(1) ***Job Duties***

The **Embedded QA Testers** in the Design Department are primarily responsible for testing and validating the game systems (Tr. 434:17-20). As a result of the embed, **Embedded QA Testers** work alongside designers and learn the process for creating and balancing weapons (Tr. 434:21-435:3). With this knowledge, **Embedded QA Testers** can identify an issue in the systems and communicate that issue through a Jira bug report to the appropriate system designer to remedy (Tr. 435:6-16). Similar to the Systems Designer, the **Embedded QA Testers** report to the Lead Systems Designer who then reports to a Design Manager that rolls up to David Pellas (Tr. 436:9-13).

(2) ***Interaction with Other Employees***

Embedded QA Testers regularly work with the positions throughout the Design Department (Tr. 435:17-20). Although the **Embedded QA Testers** primarily work with the Systems Designers, they must also understand the duties and skills of the UX Designers to provide the rapid turnaround on identifying bugs across the user interface system, (Tr. 435:24-

[16] The Technical UX Designer is a subclassification of the UX Designer. (Tr. 416:16-17). All of the duties and interactions of the UX Designer apply to the Technical UX Designer as well. (Tr. 416:22-417:10). The Technical UX Designer interacts with the department, including embedded testers, in the same manner as the UX Designer. (Tr. 417:4-10).

436:8), which is a key system for a first-person shooter like Call of Duty, with any bugs being high priority.

6. ***Community Department***

a. Associate Community Specialist

(1) *Job Duties*

The Associate Community Specialist has three main job responsibilities (Tr. 35:1-4). They are as follows: (1) listening to the community of players to ensure awareness of any live issues that are happening with the game; (2) working directly with the QA team to address any live game issues; and (3) being responsible for diversity, equity and inclusion issues and to ensure the game is accessible to individuals with any disabilities or other challenges (Tr. 35:1-14; R. Exh. E-3).

(2) *Interaction with Other Employees*

Obviously, since multiplayer games like Call of Duty have live game issues, there is substantial interaction with the **Embedded QA Testers**. The Associate Community Specialist reaches out to the **Embedded QA Testers** on a daily basis to address any live issues with the game that the Associate Community Specialist may hear about (Tr. 35:3-10, 36:6-9; R Exh. E-3). The Associate Community Specialist is responsible for "liais[ing] with internal teams to manage information and feedback flow." (R. Exh. E-2 at 147). The Associate Community Specialist also reaches out to other departments based on the particular issues that he may hear about from the community of players (Tr. 36:17-37:6).

7. ***Engineering Department***

a. Audio Engineer

(1) *Job Duties*

There are multiple levels of the Audio Engineer position. Regardless of level, Audio Engineers are generally responsible for creating and implementing audio experiences (Tr. 227). Audio Engineers further develop the audio engine systems and help improve the workflow of the content team (R. Exh. E-2 at 75-77, 78-80, 144-146). In addition to these duties, the Associate Audio Engineer assists in designing, modifying, optimizing, and debugging core audio engine systems (R. Exh. E-2 at 78-80). *Part of this is a quality control function*.

The Job Profile Name "Audio Engineer" shares common job duties with the following Job Profile Names: Associate Audio Engineer and Senior Audio Engineer (Tr. 228-229). Individuals in each Audio Engineer level classification generally perform the same core job duties. The prefixes denote the years of experience, level or rank, which generally correspond with the complexity of tasks assigned, and expectations with regard to work quality and efficiency (*Id.*; R. Exh. E-2 at 75-77, 78-80, 144-146).

An Audio Engineer is generally expected to have some experience in developing and optimizing audio systems and five or more years of experience working in the game industry or a related field (R. Exh. E-2 at 75-77, 78-80, 144-146).

(2) *Interaction with Other Employees*

Audio Engineers collaborate with Engineers, Producers, and Designers to ensure audio experiences are appropriately implemented throughout the development process (Tr. 227:11-228:24; R. Exh. E-2, at 75-77, 78-80, 144-146). Similarly, Audio Engineers frequently collaborate with **Embedded QA Testers** to ensure that the sound and audio experiences designed by the Audio team are implemented correctly (Tr. 227:15-228:6).

b. Software Engineer

(1) *Job Duties*

There are multiple levels of the Software Engineer position. Regardless of level Software Engineers generally complete programming tasks on various projects. Specifically, Software Engineers implement game systems, debug software, design and write software, and document designs and code developed (*Id*.). Software Engineers and Senior Software Engineers also deploy, evaluate performance, and optimize and test UI software on PC and console platforms (R. Exh. E-2, at 133-135, 136-138).

The Job Profile Name "Software Engineer" is the mid-level classification and shares common job duties with the following Job Profile Names: Entry Software Engineer[17]; Associate Software Engineer; and Senior Software Engineer (Tr. 226:6-13). The prefixes "Entry," "Associate," and "Senior" denote the years of experience, level or rank, which generally correspond with the complexity of tasks assigned, and expectations with regard to work quality and efficiency (*Id*.; R. Exh. E-2 at 66-67, 136-138, 133-135).

The Entry, or Junior, Software Engineer is the entry level classification. The Associate Software Engineer Classification is the junior-level classification (R. Exh. E-2 at 66-67) The Software Engineer is the mid-level classification and generally requires five or more years of experience in the game industry (R. Exh. E-2 at 136-138). The Senior Software Engineer Classification is the senior-level classification and requires five or more years of experience.

(2) *Interaction with Other Employees*

Software Engineers collaborate with various departments, including Production, Design, Art, Audio and QA (Tr. 225:17-226:5; R. Exh. E-2 at 66-67, 133-135, 136-138). Specifically,

[17] *See* R. Exh. E-6 indicating that the Entry Software Engineer Job Profile Name corresponds to the Junior Software Engineer Job Profile Name.

Software Engineers and Designers work closely together to ensure that code developed by a Software Engineer adequately captures the Designer's concept (*Id.*). Software Engineers also collaborate with artists capturing the requirements and design of systems within the games (R. Exh. E-2 at 66-67).

Software Engineers further collaborate with **Embedded QA Testers** by writing and checking in code, which the **Embedded QA Testers** then test (Tr. 224:20-225:13). Under the embedded model, **Embedded QA Testers** are able to quickly communicate with Software Engineers and frequently test the latest iterations of code and builds (*Id.*). After testing, **Embedded QA Testers** inform the Software Engineers as to whether the latest iteration functions as intended (*Id*.). This iterative process is repeated until the desired result is achieved (*Id.*).

c. Tools Software Engineer

(1) ***Job Duties***

There are multiple levels of the Tools Software Engineer position (Tr. 230:17-20). Regardless of level, Tools Engineers are generally responsible for providing tools to all departments throughout the development process in order to maximize iteration times and productivity (R. Exh. E-2 at 54-57, 58-60). Tools Engineers also develop, modify, debug, and optimize existing tools, develop new tools to use in asset creation and management, and participate in the code review process (*Id.*). *Part of this—the debugging and optimization—is a quality control function.*

The Job Profile Name "Tools Software Engineer" is the mid-level classification and shares common duties with the Associate Tools Software Engineer and the Senior Tools Software Engineer (*Ibid*). The prefixes "Associate" and "Senior" denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned, and expectation with regard to work quality and efficiency (*Id*.; R. Exh. E-2 at 54-57, 58-60). The Senior Tools

Engineer position is the senior-level position for this classification and generally requires five or more years of experience in the media-pipeline tools development (R. Exh. E-2 at 54-57).

(2) ***Interaction with Other Employees***

Tools Engineers work with all departments in developing, maintaining, and optimizing tools (*Id*.; Tr. 230:5-16). For example, Tools Engineers collaborate with Animators and Artists to develop tools that control the build processes (*Id.*). Tools Engineers also collaborate with **Embedded QA Testers**. Specifically, Tools Engineers design or maintain tools used by other departments, which **Embedded QA Testers** then test to ensure they function as intended (Tr. 229:13-230:4).

d. Build Engineer

(1) ***Job Duties***

The Build Engineer is responsible for developing and improving the build pipeline that is critical for Raven to ship its games (R. Exh. E-2 at 50-53). Build Engineers also develop, modify, debug, and optimize the existing build and asset pipeline (*Id*.). *Part of this – the debugging and optimization – is a quality control function.*

The Build Engineer also keep the overnight builds running to ensure that the development teams have fresh builds every morning (Tr. 231:5-20). The Build Engineer further controls what download packages look like for players and determine the best way to build packages and how to deliver packages to players both internally and externally (*Id*.).

(2) ***Interaction with Other Employees***

Build Engineers collaborate with all development teams at Raven to optimize integration systems and game build deployments (R. Exh. E-2 at 50-53). Build Engineers work especially closely with IT and Production in order to reduce build times (Tr. 233:11-17). Build Engineers and **Embedded QA Testers** also communicate frequently to discuss whether there are any issues

or bugs in the overnight builds (Tr. 231:25-232:12). If such issues exist, **Embedded QA Testers** and Build Engineers will work together to determine why a particular build may have failed (*Id*.).

e. Senior Expert Engine Engineer

(1) ***Job Duties***

The Senior Expert Engine Engineer generally requires eight or more years of programming experience (R. Exh. E-2 at 155-157). The Senior Expert Engine Engineer is responsible for ensuring that the game's operating systems, or "engine," function properly (Tr. 236-237). Specifically, this position will architect, refactor, and maintain a variety of game and low-level systems (R. Exh. E-2 at 155-157). The Senior Expert Engineer will also design, write, debug, and refine core systems, features, tools and other infrastructure, which is a quality control function (*Id.*). *Part of this—the debugging and refinement—is a quality control function*.

(2) ***Interaction with Other Employees***

The Senior Expert Engine Engineer works closely with **Embedded QA Testers** and with the Production team (Tr. 237:15-17). This is unsurprising, as both positions involve debugging duties, and maintenance of well-operating systems.

8. *Production Department*

The Production Department "make[s] sure everyone understands what all the tasks are and make[s] sure they are done on time and working in harmony with other departments." (Tr. 31:8-17). In other words, the Production Department functions as "the glue really that connects all the various departments together." (Tr. 166:16-19). It initiates the planning process, makes sure there are enough people to accomplish the creative vision of the creative team and directors, and is responsible for execution (Tr. 166:19-167:1). The Production Department also works on

projections, to help determine "what it would take to do the next project going forward, resource and cost, et cetera." (Tr. 31:8-17).

a. Producer

(1) ***Job Duties***

There are varying levels of the Producer (Developer) position: Entry Producer (Developer), a.k.a. Production Coordinator[18]; Associate Producer (Developer); Producer (Developer); and Senior Producer (Developer) (R. Exh. E-6). Regardless of level or rank, Producers are generally responsible for establishing long term feature schedules, milestone definitions, and phase or spring goals (R. Ex. E-2, at 2; 44; 45; 46). Producers also drive the development of game features and content from concept to completion (*Id*.). These job profiles generally perform the same job duties, differing only in years of experience, level or rank, and complexity of tasks (Tr. 222:13-223:11).

Entry Producer, or Production Coordinator, is the junior level position under the Producer job classification (R. Exh. E-2 at 119-121). This position assists constituents with scheduling, taking minutes in meetings, and ensuring Jira buckets are triaged and prioritized appropriately (Tr. 218-220).

The Associate Producer (Developer) is the second level under the Producer job profile and typically has one through three years of experience (R. Exh. E-2 at 46). The Producer (Developer) position is the third level under the Producer job profile and typically has three or more years of experience (R. Exh. E-2 at 45). The Senior Producer (Developer) position is the fourth level under the Producer job profile and typically has five or more years of experience (R.

[18] *See* R. Exh. E-6 at 2, indicating that the Entry Producer position corresponds to the Production Coordinator Position. Note that although the testimony refers to "Environment Producer," this is in error based on a misunderstanding of the abbreviation "Ent." The correct title is Entry Producer.

Exh. E-2 at 44). These positions have the same core responsibilities as the Entry Producer position, but handle more critically sensitive work and handle higher priority needs (Tr. 221-223).

(2) ***Interaction with Other Employees***

Producers generally collaborate with Directors, Leads, other Producers, and Art Directors in performing the duties described above (R. Exh. E-2 at 2, 44, 45, 46). Producers generally collaborate with directors and leads to establish long term feature schedules. Producers also interface directly with other Producers and Art Directors to facilitate the fulfillment of outsourcing needs for Call of Duty Warzone and Campaign (*Id*.).

Entry Producers or Production Coordinators also interact with the internal environment art teams and external partners to ensure day-to-day operations work optimally (R. Exh. E-2 at 119-121). This position further assists constituents with scheduling, taking minutes in meetings, and ensuring that Jira debug tickets are triaged and prioritized appropriately (Tr. 218:15-219:3). Similarly, Producers collaborate with the UI team to ensure Jira buckets are triaged effectively and to ensure **Embedded QA Testers** know when builds or assets will be ready for testing (Tr. 220-221). *Part of a Producer's duties—all the Jira duties—is a quality control function.*

Producers also frequently collaborate with the Engineering Department (Tr. 223-225). Specifically, when Producers develop new ideas or concepts, the Producers communicate these to the Engineers who then write the code necessary to implement the concepts (*Id*.).

Producers also work closely with **Embedded QA Testers** (Tr. 219:8-220:8, 222:5-8). Specifically, Producers coordinate with **Embedded QA Testers** to ensure Jira tickets are prioritized, triaged, and staffed appropriately (Tr. 219:8-10). Producers also work with **Embedded QA Testers** to ensure deadlines for bugs are met (*Id*.)

b. Production Embedded QA Tester

(1) *Job Duties*

The **Embedded QA Testers** in the Production Department are responsible for QA for the live game and close out—which involves preparing content for a specific release date (Tr. 182:4-20). **Embedded QA Testers** may also assist with testing elsewhere in the studio where there is a business need. (Tr. 182:20-24). The **Embedded QA Testers** report to and receive day-to-day assignments from either a Lead Producer or a Senior Producer (Tr. 185:10).

(2) *Interaction with Other Employees*

Embedded QA Testers work with game development employees in the Audio Department as a part of the triage process for audio issues when the teams close out the live game (Tr. 202:15-20, 204:17-21). **Embedded QA Testers** work with game development employees in the Animation Department on tasks such as weapon inspection, which confirms that the round or plume of smoke associated with the weapon looks the way it should (Tr. 203:13-20, 204:22-205:2). **Embedded QA Testers** also work with the Engineering Department very frequently to prepare the live game and ensure the morning build is in good shape for the day's work (Tr. 199:20-200:17). Additionally, **Embedded QA Testers** spend over half of their time participating in discussions with game development employees outside of the Production Department (Tr. 206:8-15).

9. ***IT Department***

The IT Department ensures that Raven studio has the right hardware, software, and system for employees to be able to perform their everyday function of developing video games (Tr. 30:8-20, 215:9-16).

a. Systems Administrator

(1) *Job Duties*

There are multiple levels of the Systems Administrator position (Tr. 217:9-19). Regardless of level, Systems Administrators are responsible for the technical design, planning, implementation, and development of recovery procedures for critical services and technology infrastructure within Raven Studio (R. Exh. E-2 at 3-6, 68-70, 141-143, 177-179). The Systems Administrator also provides technical support, supporting operating systems, computer, storage, and networking infrastructures, and a range of applications utilized at Raven (*Id.*). Further, the Systems Administrator monitors system performance, configures equipment and services, and manages maintenance and repairs (*Id*.). Occasionally, Systems Administrators are called on to respond to serious systems outages and other immediate problems (*Id.*). Systems Administrators also manage and maintain remote computing systems and services, and internal tools utilized at Raven, including Jira, Confluence, and Office (*Id*.).

The Job Profile Name "Systems Administrator" is the mid-level classification, and is a position which shares common job duties with the following Job Profile Names: Associate Systems Administrator, Senior Systems Administrator, Supervisor Systems Administrator, and Expert Systems Administrator. The "Associate," "Senior," "Supervisor," and "Expert" prefixes denote the years of experience, level, or rank, which generally correspond with the complexity of tasks assigned, and expectations with regard to work quality and efficiency (Tr. 217:13-16; R. Exh. E-2 at 3-6, 68-70, 141-143, 177-179).

The Senior Systems Administrator is generally expected to have three or more years of experience in Information Technology roles with a focus on infrastructure administration (R. Exh. E-2 at 3-6). The Associate Systems Administrator and the Supervisor Systems Administrator position are generally expected to have five or more years of experience in the

same field as described above (R. Exh. E-2 at 68-70, 141-143). The Expert Systems Administrator is the highest level of the Systems Administrator Job Profile Name and is typically expected to have seven or more years of experience in Information Technology roles.

(2) ***Interaction with Other Employees***

Systems Administrators work closely with all disciplines within the studio to ensure that software, hardware, servers and networks all run smoothly (R. Exh. E-2 at 3-6, 68-70, 141-143, 177-179). Systems administrators also collaborate and communicate with engineering and production to streamline build processes (Tr. 216). *Part of their duties involves the quality control function of ensuring Raven's basic video game development systems do not incur problems and fixing such problems if they happen.*

III. ARGUMENT

A. Applicable Legal Standards

1. *The Workforce-in-Flux Doctrine Warrants Dismissal or, At Minimum, Deference to the Company's Anticipated Structure Once the Transition to the Newly Implemented Embedded Model is Complete.*

The "workforce in flux" doctrine requires that the Region dismiss the petition or, at minimum, view all facts through the lens of the complete embedded testing model because the positions in the petitioned-for unit, QA testers and QA leads (a position that has been eliminated entirely) no longer operate in a separate, standalone team. Under this doctrine, the Board will not conduct an election where permanent changes to the scope and composition of a petitioned-for unit are imminent and certain. *See, e.g., Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992). This doctrine is an exception to the Board's statutory mandate to hold an election upon the filing of a petition. In other words, the doctrine is a basis to dismiss the election entirely. *See, e.g., American Bottling Co. v. NLRB*, 992 F.3d 1129, 1136-37 (D.C. Cir. 2021) ("the Board may decline to hold an election if a substantial expansion or contraction of the workforce voting on

unionization is "imminent and certain."); *Retro Env't Inc.*, 364 NLRB No. 70, slip op. at 4 (2016) ("The Board has recognized a narrow exception to this statutory mandate, limited to circumstances in which it is reasonably certain that conducting an election will serve no purpose: it will dismiss an election petition when cessation of the employer's operations is imminent, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business.").

As the party asserting that the election should not be conducted, "[t]he employer bears the burden of proving that a substantial change is both imminent and definite." *American Bottling*, 992 F.3d at 1137 (quotations omitted). The substantial steps Raven studio has already taken in furtherance of the embedded testing model demonstrates that both of those elements are met here.

To establish imminence, an employer need not demonstrate that it will take the asserted action on a specific date—a broader period of time (even up to 90 days) is acceptable. *American Bottling*, 992 F.3d at 1139 ("The Company is correct that the Board's cases do not require an employer to prove that a unit contraction will occur on a specific date. The employer instead may identify a period of time during which contraction is planned.") (collecting cases). Here, the embedding model is more than imminent—it is underway. It is undisputed that Raven management has already initiated a defined, concrete embedding model at Raven Software. Indeed, the record demonstrates that QA Testers are now embedded in the Animation, Art, Audio, Design, Production, and Engineering departments. Thus, the change wrought by the embedded model—eliminating a QA-specific department and uniform workgroup—has moved beyond imminent, it is actually ongoing.

For the same reasons, the embedded testing model satisfies the "certain" prong as well. Clear, methodical steps taken toward executing the action are sufficient to demonstrate that permanent changes are sufficiently "certain." *See Hughes Aircraft*, 308 NLRB at 83 (finding plan to terminate operations to be certain because, in part, plan had "methodically been carried forward"). Again, documentation and testimonial evidence clearly establish that Raven has taken methodical steps toward transitioning to an embedded QA model since mid-2021, culminating in the Company embedding 11 QA testers in various departments on January 31, 2022. As such, the embedded testing model at the Raven studio is "certain." *See, e.g.*, *Martin Marietta Aluminum*, 214 NLRB 646, 646–647 (1974) (holding unit contraction was certain because employer had taken steps to contract the unit before the petition was filed and "[a] substantial number of employees had already been terminated before the hearing").

Because Raven has satisfied all elements of the "workforce in flux" doctrine, dismissal of the Union's petition is appropriate here. If, however, the Region does not dismiss the petition, the doctrine *at the very least compels the Region to view all facts from the perspective of a fully implemented embedded testing model*. The record undisputedly demonstrates that the implementation of the embedded testing model has happened in many stages, and the remaining ones are both imminent and certain. Therefore, because the "workforce in flux" doctrine requires the Region to look into the future to assess the impact of permanent changes to the scope of a petitioned-for unit, the Region must examine community of interest as if the embedded testing model and its impact are fully complete.

2. ***Under PCC/Boeing, the Union Must Show That Distinct Interests Among Embedded QA Testers Outweigh Shared Interests With Employees Outside This Group.***

When a party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board must determine whether "the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit." *Boeing*, 368 NLRB No. 67, slip op. at 2 (quoting *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 7 (2017)). In *PCC Structurals*, the Board returned to the traditional community-of-interest test, which considers whether the employees (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *Boeing*, 368 NLRB No. 67, slip op. at 2 (quoting *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 5). The Board has found none of these factors to be dispositive. *See Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004) (finding no separate community of interest between two groups of employees because, inter alia, the groups evidenced "substantial functional integration").

In *Boeing*, the Board further clarified that *PCC Structurals* contemplates a three-step process for determining unit appropriateness:

> First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third, consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

Boeing, 368 NLRB No. 67, slip op. at 3. Regarding the second step, the Board must determine whether the employees excluded from the unit "have meaningfully distinct interests in the context of collective bargaining that *outweigh* similarities with unit members." *Id.* at 4 (internal

quotes omitted; emphasis in original). "If those distinct interests [of excluded employees] do not outweigh the similarities [between excluded and petitioned-for employees], then the unit is inappropriate." *Id.* In other words, the Union bears the burden of establishing that any distinct interests of employees outside the unit outweigh the shared interests they have with **Embedded QA Testers.**

Under *PCC Structurals*, the employer does not bear the burden of showing overwhelming similarity. Here, the Board "may find that the exclusion of certain employees renders the petitioned-for unit inappropriate even when excluded employees do not share an 'overwhelming' community of interest with employees in the petitioned-for unit." 365 NLRB No. 160, slip. op at 7. Rather, the Board will determine that a petitioned-for bargaining unit is appropriate, and that excluded employees should remain excluded, only if "the petitioned-for employees share a community of interest sufficiently distinct from employees excluded from the proposed unit to warrant a separate appropriate unit." *Id.* (emphasis added). "[A]t no point does the burden shift to the employer to show that any additional employees it seeks to include share an *overwhelming* community of interest with employees in the petitioned-for unit." *Id.* at 11 (emphasis in original).

The Board also "recognize[s] that, consistent with Section 9(b) of the Act, the Board has long held that a plantwide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Boeing*, 368 NLRB No. 67, slip op. at 6 (quoting *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962)). And, the Board has held that a "high degree of functional integration" among employees is "particularly compelling" in determining that some should not be excluded from a bargaining unit. *Id.* at 5.

B. Embedded QA Testers Do Not Share An Internal Community of Interest.

The record demonstrates that **Embedded QA Testers** lack an internal community of interest—the first prong under *Boeing*—for three main reasons. First, following implementation of the embedded model, **Embedded QA Testers** no longer work in a separate department. They are now spread across several different departments, including Animation, Art, Audio, Design, Production, and Engineering (R. Exh. E-1; Tr. 181:23-182:2, 430:22-25, 434:15-17, 437:11-14, 691:24-692:1). Second, **Embedded QA Testers** now report directly to, and receive their daily work assignments from, supervisors within their embedded departments—meaning **Embedded QA Testers** no longer share common supervision (Tr. 91:22-25, 92:7-9, 704:8-15, 708:6-14, 716:2-8; R. Exh. E-19). The lack of any continuity along departmental and supervisory lines is fatal to an internal community of interest among **Embedded QA Testers**. *See Boeing*, 368 NLRB No. 67, slip op. at 7 (finding petitioned-for unit lacked an internal community of interest because employees were organized into separate departments and did not share supervision with each other); *Twin City Foods, Inc.*, Case No. 19-RC-265696 (Nov. 3, 2020) (petitioned-for unit of warehouse and packaging employees lacked an internal community of interest in part due to organization in separate departments and separate supervision). Finally, **Embedded QA Testers** are underinclusive of employees who have quality control duties. Various other employees with non-QA job titles perform quality control work as well. *See* III.C.6, below.

C. Embedded QA Testers in the Union's Petitioned-for Unit Are Not Sufficiently Distinct from the Excluded Employees at Raven Studio.

Applying the traditional community of interest test affirmed in *PCC Structurals* and *Boeing*, the only appropriate unit in this case must include all game development employees at Raven i.e., all employees who design, create, and produce a Raven game. In other words, all employees in game development or all employees in the Raven studio, which physically was,

and will be, one "plant," and operates as one integrated enterprise. The employees the Union has excluded from its proposed unit—employees in the Community, Audio, IT, Art, Design, Engineering, Animation, and Production departments—have production roles and have a high degree of functional integration with **Embedded QA Testers**. Some of these employees even perform quality control duties themselves. In comparison, the factors that distinguish **Embedded QA Testers** from these other game development employees—especially as there is no longer a QA department with interchangeable and homogenous QA employees—are "relatively insignificant in the context of collective bargaining." *PCC Structurals*, 365 NLRB No. 160, slip op. at 5. As such, the Union has not demonstrated, as it must, both that the distinctions of other game development employees outweigh their many shared interests with **Embedded QA Testers**, nor that the **Testers'** interests are "sufficiently distinct." *Id*. at 11; *Boeing*, 368 NLRB No. 67, slip op. at 4.

The Union's gerrymandered unit cannot be certified because it arbitrarily and irrationally excludes employees who are so similar to the included employees that they lack *any* separate community of interest justifying a separate bargaining unit.

1. *The Proposed Unit Defies Raven's Post-Embed Departmental Structure.*

The Union's proposed unit does not track Raven's current departmental lines. There is no current "QA Department." Now that QA Testers have been embedded within Raven studio, QA no longer operates as a single team of employees with interchangeable job skills and functions. Instead, consistent with best practices throughout the industry and the other lead development studios within Activision, groups of individual **Embedded QA Testers** are embedded directly into the Animation, Art, Audio, Design, Engineering, and Production Departments, and are specialists catering to the particular QA issues of the "home department." (Tr. 181:23-182:2, 430:22-25, 437:11-14, 431:1-3, 691:24-692:1; R. Exhs. E-1, E-18, E-19).

Specifically, there are three **Embedded QA Testers** in the Animation Department, one **Embedded QA Tester** in the Audio Department, three **Embedded QA Testers** in the Art Department, three **Embedded QA Testers** in the Design Department, and six **Embedded QA Testers** in the Production Department (*Id*.).

The Union's proposed unit ignores Raven's embedded testing model and departmental structure. Instead, the Union has simply plucked individual **Embedded QA Tester** employees out of a multi-departmental structure, and ignores the fact that different **Embedded QA Testers** are now supposed to, and actually do, have specialized skill sets and service different departments.

2. *QA Testers Share Common Supervisors With Excluded Employees.*

As discussed above, following the implementation of the embedded model, **Embedded QA Testers** report to the same supervisors as the other employees in their embedded departments. When assessing common supervision, the Board focuses on the supervisor who supervises employees' daily work, directs, schedules and assigns work, provides day-to-day guidance, and has the ability to hire, fire, or discipline employees. *See, e.g.*, *Executive Resource Associates*, 301 NLRB 400, 402 (1991); *NCR Corporation*, 236 NLRB 215 (1978). Here, **Embedded QA Testers** receive all day-to-day assignments, feedback, and supervision of tasks from the department lead within the department the testers are embedded in (Tr. 91:22-25, 92:7-9, 704:8-15, 708:6-14, 716:2-8; R. Exh. E-19). Daily assignments also come from other game development employees in varying departments through Jira and QA Requests ("QARs") requesting that the **Embedded QA Testers** test a newly created build or feature (Tr. 817:5-818:18, 824:23-826:1; 875:5-21). Although **Embedded QA Testers** have a dual report to QA Manager Clark, he is responsible for managing only administrative duties such as approving time

off requests in Workday (Tr. 91:19-92:6). For annual performance reviews, **Embedded QA Testers** are jointly evaluated by both Clark and their supervising department lead (Tr. 123:7-11).

Thus, following the full deployment of the embedded model, the **Embedded QA Testers** do not even share common frontline supervisors. Each **Embedded QA Tester** reports directly to, and receives their daily assignments from, the department lead of their assigned department (Tr. 704:8-15, 708:6-14, 716:2-8; R. Exh. E-19). Through this reporting structure, those leads report to the director of their department who then reports to the head of the studio, Brian Raffel (Tr. 654:11-17, 348:19-349-25; R. Exh. E-1).

In addition to the department level supervisory structure, **Embedded QA Testers** are assigned to either of the two functional teams—Warzone and Campaign teams (Tr. 28:5-10, 317:5-12). The Warzone and Campaign teams are each led by two different Senior Creative Directors and each team has its own, distinct reporting structure under those Creative Directors. It is undisputed, therefore, that all game development employees at Raven report to the same upper-level managers—supporting the fact that **Embedded QA Testers** share a community of interest with the large mass of excluded game development employees. *See, e.g., Pratt & Whitney*, 327 NLRB 1213, 1216 (1999) (holding petitioned-for unit and excluded employees shared community of interest despite lack of common immediate supervision because "there is no common organizational or overall supervision of all the employees in the petitioned-for unit that does not also include excluded employees. Hence, the significance of the petitioned-for employees' separate supervision is thereby lessened.").

3. ***QA Is Functionally Integrated Into, and an Essential Part of, the Production Process.***

The standard workflow procedure for developing, testing, and updating Call of Duty games highlights the exceptional integration across all development job classifications at Raven.

The Board has highlighted two independent scenarios—both present here—that demonstrate functional integration: (1) employees in the petitioned-for unit work on different phases of the same product with excluded employees, *see Transerv Sys., Inc.*, 311 NLRB 766, 766 (1993), and (2) included and excluded employees take part in the same "production work flow" and where the work "has a shared purpose," *see Northrop Grumman Shipbuilding, Inc.*, 357 NLRB 2015, 2017 (2011), enf. denied on other grounds sub nom. *NLRB v. Enterprise Leasing Co. Southeast LLC*, 722 F.3d 609 (4th Cir. 2013). The record demonstrates that **Embedded QA Testers** are functionally integrated into the development process under both of these scenarios. **Embedded QA Testers** and production employees across all departments work together on creating, developing, and testing games. Accordingly, the development departments rely on **Embedded QA Testers** to test and address bugs at every stage of the production process. For example, during the Concept stage, **Embedded QA Testers** participate in the brainstorming, along with other studio employees, to provide ideas for the video game (Tr. 370:4-16). During the Production phase, **Embedded QA Testers** identify and resolve bugs related to the VO lines as they are integrated into the video game (Tr. 425:3-21). From the Production to Launch phases, **Embedded QA Testers** test the performance of the game play space and work with Designers to test and resolve any visual oddities that arise (Tr. 412:7-14). In the Animation Department, **Embedded QA Testers** are involved in each and every update and iteration of the cinematic scene or animation development to ensure it works properly within the game itself (Tr. 714:8-16). In the Engineering Department, when Tools Engineers work with Animators and Artists to develop the tools to build the video game processes throughout the development process, **Embedded QA Testers** are there to test and ensure the tools work as intended (Tr. 230:5-16).

Further demonstrating their integration, **Embedded QA Testers** participate alongside game development employees for the shared purpose of creating and updating video games. Indeed, **Embedded QA Testers** are not focused on a separate product, they are an integral part of the game development process—wherein employees across all departments share the responsibility for creating video games. While not every classification has daily interaction with all other positions, there is a high level of collaboration between all tester and game development positions to prepare a video game product for launch and to ensure it continues to perform as expected.

Under similar facts, the Board has found that employees working together towards a common employer goal are functionally integrated and share a community of interest. In *Transerv Systems*, the Board held that the Union's petitioned-for unit of bicycle messengers, excluding driver messengers, was not an appropriate unit. 311 NLRB 766, 767 (1993). In reaching this conclusion, the Board relied on the high level of functional integration based on the fact that most deliveries involve both a bicycle messenger and a driver, as well as evidence of frequent contact and the fact that both classifications perform similar functions of picking up or delivering packages. *Id*. at 766. The Board held that differences in immediate supervision and "the relatively few number of transfers between classifications" did not outweigh the evidence supporting a community of interest finding. *Id*. Similarly, here, *every video game product requires the involvement of each job classification at nearly every product stage* and the **Embedded QA Testers** perform crucial roles alongside all other game development employees. *See e.g.*, *Terex*, 360 NLRB 1252 (2014) (fractured unit of only undercarriage employees found inappropriate where employees assembled bottom of trucks and assembly employees installed the tops of trucks, and minimal difference of undercarriage employees' duties did not undercut

evidence of integration). *See also Boeing*, 368 NLRB No. 67, slip op. at 5-6 (employees, including quality control inspectors, with a high degree of functional integration with a production process, were not a separate appropriate unit).

Indeed, the Board has repeatedly recognized that quality assurance and/or quality control employees are *inherently functionally integrated with production employees*, and therefore should be part of the same unit, due to the vital role that QA plays in the broader production operation. Keeping in mind that all of Raven's game development employees are "production employees" as they all work on producing a video game, this means the **Embedded QA Testers** are inherently integrated. For example, in *Keller Crescent Co., Inc.*, 326 NLRB 1158 (1998), the Board held that "the testing and sampling work of the quality assurance monitors is functionally integrated into the Employer's production operations" because, in part, quality testing "is a vital part of the production process." *Id.* at 1159. *See also Bennett Indus.*, 313 NLRB at 1364 (holding quality control employees shared community of interest with production employees because quality control "is an extension of and integrated with the manufacturing process."); *Hogan Mfg.*, 305 NLRB 806, 807 (1991) (holding quality control testers shared a community of interest with production unit employees because "quality control is a vital part of the production process."); *Blue Grass*, 287 NLRB at 299 (same because "quality control inspectors [are] a vital part of the production of the plant . . . Employees who ensure that production is of a uniform high quality are an integral part of the overall manufacturing process."); *W.R. Grace*, 202 NLRB at 789 (same because "quality control employees have more numerous contacts with production and maintenance employees and the quality control operation constitutes an integral part of the Employer's entire operation."); *Air Liquide*, Case 04-RC-266637, slip op. at 22, 25 (Apr. 14, 2021) (same because quality control technicians work alongside production employees when

testing samples, resulting in "significant functional integration and contact among all of classifications"); *Allan Bros., Inc.*, Case 19-RC-265331 (Nov. 10, 2020) (rejecting petitioned-for unit of production employees and ordering election for plant-wide unit, including quality control employees, because, among other things they were "involved in several steps of the process" and worked directly with several different production classifications).

Thus, all development departments, including Animation, Art, Audio, Community, Design, Production, Programming, and IT, hold interests that are completely intertwined with those of the **Embedded QA Testers**. All game development employees work hand-in-hand throughout the game development process to produce excellent video game products, which could not be done without the integral work of each game development employee. Excluding these employees from the bargaining unit would create a fractured production operation, in which some employees working together on a video game product and collaborating across the department team are part of the bargaining unit, and others are not, despite this collaboration. What is more, it defies common sense to divide **Embedded QA Testers** from other game development employees when *the other game development employees are creating and improving the very content that the Testers work on,* before, during, and after the time that the petitioned-for Testers make their contributions. **Embedded QA Testers** are certainly "assuring the quality of" *something*, and that something is the various types of content from Art, Animation, Audio, IT, Engineering, Programming and Production, and the content identified by Community employees. The quality fixes proposed and implemented by **Embedded QA Testers** simply and logically cannot happen without extensive communication, interaction, and integration with these employees, ensuring they all have the same community of interest in their day-to-day work conditions and issues. Indeed, even the Union's lead witness, Brent Reel,

testified that testing is an integral part of the game making and development process (Tr. 902:12-21).

Excluding these other game development employees would be arbitrary, would not effectuate the purposes of the Act, would cause disharmony among the production workforce at Raven, and would not provide adequate consideration to the Section 7 interests of the excluded workers. The Board in *Boeing* expressly rejected such an outcome, holding that it is "particularly inappropriate to carve out a disproportionately small portion of a large, functionally integrated facility as a separate unit." *Boeing*, 368 NLRB No. 67, slip op. at 5, quoting *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). Therefore, all game development employees in the Animation, Art, Audio, Community, Design, Production, Programming, and IT Departments must be included in a facility-wide bargaining unit with **Embedded QA Testers**.

4. ***QA Testers Have Extensive, Often Daily Contact with Departments Throughout the Development Process.***

The Company presented uncontroverted evidence that **Embedded QA Testers** interact extensively with excluded employees throughout the development process. All Raven employees, including **Embedded QA Testers**, attend the regular studio meetings and studio Town Halls (Tr. 469:7-12). **Embedded QA Testers** are invited to and participate in the stand-up and weekly meetings of the department in which they are embedded (Tr. 460:12-19; 666:4-11). For example, **Embedded QA Testers** in the Animation Department have been added to the "many, many group email threads and e-mail list and team meetings and Slack channels and Confluence pages," and now take part in weekly department meetings (R. Exh. E-24) and smaller meetings involving the rigging (R. Exh.E-22), motion capture (R. Exh.E-23), and multi-player (R. Exh.E-25) teams (Tr. 666:4-11, 696:5-13, 686:2-4). Further, all employees, including **Embedded QA Testers**, use the same set of core tools for day-to-day communication and

completion of tasks—such as Slack, Zoom, Jira, and e-mail (Tr. 363:5-8; 455:8-10; 707:11-14; 708:1-5).

Prior to working remotely as a result of the global COVID-19 pandemic, **Embedded QA Testers** at Raven studio worked in the same building as all game development employees, had access to the same conference rooms, bathrooms, and breakrooms, and parked in the same parking lot (Tr. 445:14-20, 445:22–446:3). Once the Raven studio fully reopens, **Embedded QA Testers** will continue to share these common areas and work in close physical proximity with other game development employees, including sitting with their embedded departments—meaning there will no longer be a separate area where **Embedded QA Testers** work (Tr. 58:11-17). This complete lack of distinction in work areas demonstrates a substantial degree of interaction that weighs in favor of a community of interest. *See, e.g.*, *TDK Ferrites Corp.*, 342 NLRB 1006, 1008 (2004) (finding "a significant degree of interaction among the production and maintenance employees," supporting community of interest where "[t]here is no distinction between, or separation of, work areas occupied by the Employer's maintenance and production employees. With the exception of the tooling specialists, who spend part of their day in the tool room, the maintenance employees work side-by-side with the production employees.").

The Board has long held that these examples of physical proximity, alone, make it "reasonable to infer a substantial amount of interaction." *Blue Grass Indus.*, 287 NLRB 274, 299 (1987). Indeed, where, like here, "the quality control inspectors work the same hours and take breaks at the same time as the [other production employees], the inference is especially strong." *Id*. *See also Bennett Indus. Inc.*, 313 NLRB 1363, 1364 (1994) (holding quality control employees shared community of interest with production employees because, in part, quality control employees "work in close proximity" to production employees). The core hours of 9 am-

5 pm, Monday through Friday, are applicable across Raven studio (Tr. 97:9-10). There is also no distinction between the breakrooms, restrooms and conference rooms Raven employees may utilize (Tr. 445:14-15). The Board in *W.R. Grace & Company*, 202 NLRB 788 (1973), similarly found that quality control employees had "numerous contacts" with production employees and, therefore, shared a community of interest where "quality control employees attend the same monthly meetings as do [] production and maintenance employees. They share the same work breaks, lunch periods, locker room, lunchroom, and parking lot." *Id*. at 789.

Moreover, **Embedded QA Testers** have regular opportunities to communicate with employees throughout the Raven studio while off-duty. Although employees are currently working remotely due to the COVID-19 pandemic, when working in the office, all employees, including **Embedded QA Testers**, park in the same parking lot and have access to and use the same breakrooms and conference rooms. The Board has held that such opportunities for off-duty employee contact are significant. In *Casino Aztar*, for example, the Board stressed that the employees in the proposed unit and the excluded employees not only worked side-by-side, but also had "many opportunities to come into contact with one another while they are off-duty." *Casino Aztar*, 349 NLRB 603, 605–06 (2007).

5. ***All Production Employees, Including QA Testers, Are Subject to the Same Terms and Conditions of Employment and Receive the Same Benefits.***

Not only are the petitioned-for employees heavily, functionally integrated with the excluded employees in developing and updating Call of Duty-related video games, they are also subject to the same work rules and policies and receive similar training. As explained above, all employees, including **Embedded QA Testers**, attend the same new hire orientation training, alongside employees across all departments, wherein all employees complete the same new hire

paperwork, review the same Company policies, and receive the same anti-discrimination training together (Tr. 843:15-21, 844:5-14). All employees at Raven are also subject to the Company Handbook (Tr. 108:16-23). All decisions on compensation bands for job classifications are made centrally, and employee wage rates are determined by a central Compensation Team at Activision, not Raven Software (Tr. 636:23-637:3). What is more, compensation bands for **Embedded QA Testers** overlap with the bands of 60% of the job classifications in the proposed unit, including positions in all development departments (R. Exhs. E-30, E-30A, E-31). The fact that some game development employees may receive higher wages than others, alone, is not determinative. *See, e.g.*, *TDK Ferrites*, 342 NLRB at 1009 (holding production and maintenance employees shared community of interest even though maintenance employees received higher wages). *See also Air Liquide*, Case 04-RC-266637, slip op. at 25 (holding small unit including QA employees inappropriate and must include broader production employees because they all shared community of interest "[e]ven though most of the excluded classifications earn higher wages than the petitioned-for classifications, that fact alone is not dispositive."). As such, the Union cannot satisfy its evidentiary burden that these wage-related distinctions outweigh the substantial shared interests among **Embedded QA Testers** and excluded game development employees. *See Boeing*, 368 NLRB No. 67, slip op. at 6; *PCC Structurals*, 365 NLRB No. 160, slip. op at 11.

Further, the interview process and hiring decisions for game development employees, including **Embedded QA Testers**, are made within the development team (Tr. 92:11-17, 787:9-22). Specifically, interview panels for candidates generally include senior managers from the relevant development department (*Id*.). When beginning their employment, all employees, including **Embedded QA Testers**, attend the same orientation and onboarding meetings together

(Tr. 96:13-17, 843:15-21). All employees are also subject to the same performance evaluation processes (Tr. 108:24-109:3). Further, a centralized HR Department supports all employees at Raven (Tr. 108:7-12). The **Embedded QA Testers** and all other game development employees alike receive the same resources from the same HR organization, and at no time are employees split along artificial QA-only and non-QA lines.

QA testers receive the same health and welfare benefits as all other full-time employees (Tr. 104:10-105:1, 892:1-13; R. Exh. E-9). All full-time production employees, including **Embedded QA Testers**, are also eligible to receive studio bonuses under the same bonus plan, holiday gifts, and company swag (Tr. 105:24-106:25, 107:1-20). All game development employees, again including **Embedded QA Testers**, have similar standard work hours and all hourly employees—QA testers and other game development employees alike—log their hours through the same Workday platform (Tr. 97:5-10, 97:17-98:2, 154:3-14). Neither **Embedded QA Testers**, nor any other game development employees, are required to wear any specific uniforms (Tr. 157:8-11). The Board has held that such a litany of overlapping benefits and terms and conditions of employment demonstrates a community of interest necessitating that all game development employees and **Embedded QA Testers** must be in one unit. *See, e.g., W.R. Grace*, 202 NLRB at 789 (holding quality control employees share community of interest with broader production unit because, in part, "[l]ike production and maintenance employees, they punch a timeclock, and both groups enjoy the same fringe benefits such as paid vacations, paid holidays, insurance, pensions, and overtime.").

6. ***Excluded Employees Have Similar Skills to QA Testers, With Significant Interchange.***

All game development employees at Raven, including **Embedded QA Testers**, work together towards a common goal: to develop, test, and launch a bug-free video game that

provides players the best immersive experience. It is undisputed that all game development employees, not just **Embedded QA Testers**, play and test games. All game development employees similarly have the skills necessary to identify and address any bugs in the games (Tr. 751:4-10, 764:10-14). Conversely, the record contains numerous examples of **Embedded QA Testers** contributing to each stage of game development. From the first stage of development, the Concept stage, **Embedded QA Testers** are contributing ideas and participating in discussions to further develop the ideas for the game (Tr. 531:17-533:12, 728:4-13, 16-25; R. Exh. 32). During later stages of video game development, Raven has a dedicated **Embedded QA Tester** working alongside Designers on weapons—"which is the single most important piece of [Raven's] game"—to understand how those weapons are created, how to balance weapons, and therefore how to effectively identify and fix weapon bugs (Tr. 434:21-435:16). Further, within each department, employees perform similar work across the department team. For example, employees in the Audio Department focus on developing, testing, and fixing any bugs in the audio portion of the video game (Tr. 437:17-438:8). Similarly, in the Animation Department, **Embedded QA Testers** work with Animators and Riggers to ensure that all animations and models appear and function properly (Tr. 667:710, 670:8-10, 671:6-8, 702:3-12). Since the implementation of the embedded model, **Embedded QA Testers** have similarly focused on testing and addressing any issues in specific segments of the video games. In short, **Embedded QA Testers** and employees throughout all production departments must collaborate with one another to ensure that the video games successfully move through each stage of the development and update processes.

The record further demonstrates several examples of employee interchange, both temporary and permanent. The Board's standard for interchange is low. In *Howard Johnson*,

the Board noted that there was merely "*some* employee interchange" and provided relatively minor examples of a restaurant waitresses working in the banquet area when needed about "once or twice a month on average." 236 NLRB at 1206 (emphasis added); *Hotel Servs. Grp., Inc.*, 328 NLRB 116, 117 (1999) (finding sufficient employee interchange where about a quarter of the employees in the proposed unit also performed the work of employees excluded from that unit).

Non-QA game development employees temporarily interchange with **Embedded QA Testers** and perform quality control tasks on video game projects. The Board gives significant weight to evidence of temporary interchange between employees in a proposed bargaining unit. *See Red Lobster*, 300 NLRB 908, 911 (1990) (evidence of temporary interchange afforded more weight than evidence of permanent interchange). In the Art Department, Integration Artists are responsible for quality checking assets designed by other companies before they are incorporated into the video game, and FX Artists perform a quality control function by identifying and addressing technical challenges that arise while creating visuals (Tr. 389:19-399:6; R. Exh. E-2, at 16, 164). Systems Designers in the Design Department perform a quality control function when identifying and resolving issues related to overpowered video game weapons (Tr. 408:15-22). In the Engineering Department, Associate Audio Engineers optimize and debug core audio engine systems, Tools Software Engineers debug and optimize existing tools used in the asset creation process, Build Engineers debug and optimize the existing build and asset pipeline, and Senior Expert Engine Engineers debug core systems and tools (R. Exh. E-2 at 54-57, 58-60, 54-57, 58-60, 50-53, 155-157). Producers in the Production Department perform quality control functions by ensuring Jira buckets are triaged effectively (Tr. 220-221). Finally, Systems Administrators perform quality control functions when making sure basic computer power does

not incur any problems (Tr. 216:23-217:5). All the above duties require development positions, who have never been classified as a "QA position," to perform duties that an **Embedded QA Tester** would routinely perform and temporarily interchange with those **Embedded QA Testers** on a project.

There is also evidence of permanent interchange between QA testers and other game development employees. In fact, testers moving into other development roles is "common." (Tr. 213:20-24). Indeed, in Q4 of 2021, four testers moved from QA to the Production Department (Tr. 214:2-13). Moreover, in 2021, a QA Tester transferred to an Engineering Technician position in the Engineering Department (Tr. 95:9-12). Additionally, a QA Tester was promoted to the position of Production Coordinator in the Production Department (Tr. 95:19-96:1). These are not the only examples; QA Testers have also transferred to positions such as Technical Designer, Integration Artist, Associate Community Manager, and UI/UX Designer (*See* R. Exh. E-7). Although employees generally transfer only on a permanent basis among classifications at Raven, the lack of temporary transfers does not defeat a community of interest showing—especially given, among other things, the highly integrated production process and virtually identical terms and conditions of employment for all production employees. *See, e.g.*, *Boeing Co.*, 337 NLRB 152, 153 (2001) (overturning petitioned-for unit made up of small subset of production employees and holding that appropriate unit consisted of all production and maintenance, including QA employees, even though "[QA] employees are separately supervised, attend separate employee meetings, work in a separate area . . . and never temporarily transfer into the [production] groups. These distinctions, however, are offset by the highly integrated work force . . . and the comparable terms and conditions of employment among all [] groups.").

D. Although the Video Game Industry Has Limited History of Unionization, Industry and Broader Production-Industry Precedent Favors a Production-Wide Unit.

Until recently, employees in the video game industry have not unionized. On December 15, 2021, however, Vodeo Games, a video game studio, voluntarily recognized the first video game union. There, the CWA—the same union as the Petitioner in this matter—sought recognition of a studio-wide unit of all Vodeo employees, not a fractured subset of production employees. During the hearing, the Hearing Officer rejected Employer Exhibit 39, which was a press release by the Union announcing recognition of the studio-wide unit at Vodeo, on relevancy grounds. Employer Exhibit 39 was improperly rejected, however. The Regional Director should reverse the Hearing Officer's ruling and receive Employer Exhibit 39 into evidence.[19] The press release *is relevant* as evidence of the applicable industry precedent in the video game industry. The press release is also additional evidence of the Union's attempted gerrymandering in this case—wherein it is arguing that a unit consisting of all production employees is inappropriate here when it sought and received voluntary recognition of a studio-wide unit just over a month prior to filing this petition. As such, the Regional Director should consider Employer Exhibit 39, which was improperly rejected, and conclude that the limited history in the video game industry—driven by the Petitioner—supports a production-wide unit.

[19] Pursuant to Section 102.65(c) of the Board's Rules and Regulations, Activision hereby requests special permission to appeal the Hearing Officer's ruling rejecting Employer's Exhibit 39 at the pre-election hearing. In *Boeing*, 368 NLRB No. 67, slip op. at 6, the Board clearly articulated the need to consider industry precedent under Step Three of its community of interest analysis. The exhibit in question—a press release by the Union announcing the voluntary recognition of a studio-wide unit at ***the only video game union currently in existence***—is unquestionably relevant as evidence of the applicable industry precedent in the video game industry. The Hearing Officer's rejection of Employer's Exhibit 39 as irrelevant—the only reason provided for the ruling—is clearly erroneous and should be overturned. In the alternative, Activision requests that the Regional Director take judicial notice of Employer's Exhibit 39, as the CWA's press release "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FRE 201(b)(2). Importantly, the CWA never disputed that Employer's Exhibit 39 (its own press release) was inaccurate.

Moreover, "a plantwide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees." *Boeing*, 368 NLRB No. 67, slip op. at 6. Board decisions on appropriate units in comparable production industries strongly favor the plant-wide unit. In the airplane production industry, for example, the Board has held that a petitioned-for unit of technicians and technician inspectors did not share a community of interest that is sufficiently distinct from the interests of other excluded maintenance and production employees that play a significant role in manufacturing the same aircraft. *See Boeing*, 368 NLRB No. 67, slip op. at 7 (Board noting unit inappropriate because included technicians work alongside excluded employees in aircraft production process and are in the same department as excluded employees).

E. The Excluded Employees Share an Overwhelming Community of Interest with the Employees in the Union's Petitioned-for Unit.

Not only has the CWA failed to meet its burden to show that the distinct interests of **Embedded QA Testers** outweigh their shared interests with excluded game development employees under *PCC Structurals* and *Boeing*, but alternatively, the petitioned-for unit is similarly inappropriate under the Board's prior standard for determining whether a petitioned-for unit is appropriate, delineated in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), enfd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013). Under this test, the Board will analyze whether the petitioned-for employees share a community of interest using the traditional, eight factors, as is the analysis under *PCC Structurals*. However, where a party asserts that the smallest appropriate unit must contain additional employees, the Board required that the proponent "demonstrate that the excluded employees share an overwhelming community of interest with the included employees." *Specialty Healthcare*, 357 NLRB at 934.

The excluded game development employees at Raven share an overwhelming community of interest with the employees included in the Union's proposed unit. As established in detail above, the community of interest factors weigh in favor of finding that the smallest appropriate unit must include all employees who participate in Raven studio's "production" process, i.e., all game development employees at Raven studio. Established Board precedent, even under the *Specialty Healthcare* standard, expressly disapproves of a "fractured unit." *Id*. at 946 (citing *Seaboard Marine*, 327 NLRB 556, 556 (1999) ("'[T]he Board does not approve fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis.'"). The Board has found that fractured units exist where the petitioned-for unit does not, among other things, track departmental lines drawn by the employer and represents "an arbitrary segment" of an appropriate unit. *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (quoting *Specialty Healthcare*, 357 NLRB at 946).

The Union's petitioned-for unit would create an impermissible fractured unit. Since the embedded model took effect, **Embedded QA Testers** no longer operate in a standalone department. Instead, **Embedded QA Testers** operate directly within other development departments, frequently work, and are now—or soon will be—completely integrated, with the excluded employees at all stages of the video game production process, and have extensive, daily contact, shared supervisors, and almost identical terms and conditions of employment with those employees as well. What is more, **Embedded QA Testers** no longer share common day-to-day supervisors, as all **Embedded QA Testers** report to, and receive their assignments from, supervisors in their embedded department. Under similar facts, the Board and Regional Directors regularly determined that, like here, petitioned-for units were inappropriate where they ignored departmental and supervisory lines. *See, e.g., Odwalla*, 357 NLRB at 1613 (rejecting

petitioned-for unit that would create fractured unit because ignored departmental and supervisory lines); *Bergdorf Goodman*, 361 NLRB 50, 52 (2014) (rejecting petitioned-for unit of women's shoe sale associates because, in part, "boundaries of the petitioned-for unit do not resemble any administrative or operational lines drawn by the Employer," which would create fractured unit); *K&N Eng'g, Inc.*, 365 NLRB No. 141, slip op. at 3-4 (2017) (rejecting petitioned-for unit of production and janitorial employees because unit was not drawn along departmental, functional, or supervisory lines); *Future Env't Inc.*, Case 13-RC-124781 (Apr. 30, 2014) (same for petitioned-for unit consisting of only certain laborer classifications).

Accordingly, the petitioned-for unit is inappropriate even under the *Specialty Healthcare* standard, as the excluded production employees share an overwhelming community of interest with the employees in the petitioned-for unit.

F. THE UNION'S ARGUMENTS LACK MERIT.

1. *Contrary To The Union's Arguments, QA Testers Do Perform The Same Job Functions As Other Development Employees.*

The mere fact that **Embedded QA Testers** do not perform the exact same job functions as all other development employees does not provide sufficient grounds to exclude the remaining development employees. Indeed, the Union attempted to make much of the fact that there are some undisputed differences between QA testers' duties and some duties of other employees. However, the law does not require all unit employees to perform the exact same functions. The law requires a community of interest—not a "singularity of interest." Such a requirement would eliminate any possibility of a unit with more than one job classification—an approach that lacks any legal support. As such, the Union's emphasis on some differences in job functions is unavailing. Just the opposite, the fact that excluded game development employees across numerous departments, including Art, Design, Engineering and Production, perform quality

control tasks only further emphasizes the substantial shared community of interest between **Embedded QA Testers** and game development employees (Tr. 220-221, 216:23-217:5, 389:19-399:6, 408:15-22; R. Exh. E-2, at 16, 54-57, 58-60, 54-57, 58-60, 50-53, 155-157, 164). Furthermore, the undisputed fact that all developer employees, not just QA testers, perform play testing and the entering of bugs in Jira shows significant overlap between duties that further reflects the community of interest between the petitioned-for and excluded employees.

2. ***Contrary to the Union's Argument, QA Testers Do Share the Same Benefits As Other Employees, Even Prior To Being Embedded.***

The Union may argue that prior to their conversion to full-time employees, QA Testers did not have the same benefits as full-time employees. While this was previously true, it is undisputed that QA Testers were eligible for many Activision benefits and began receiving full medical, vision, and dental in December 2021—well before the CWA filed the Petition in this matter (Tr. 104:10-105:1, 643:20-25). As such, any such argument would be unavailing because **Embedded QA Testers** shared—and continue to share—the same benefits as other full-time Raven Software employees as of the date of this Petition. Nevertheless, such considerations of prior distinctions in benefits have minimal impact on the analysis. *See, e.g., Arlington Masonry*, 339 NLRB 817, 819 (2003) (finding on-call employees must be included in the unit despite that they worked sporadically, were able to decline work, and did not receive benefits); *Mercury Distr. Carriers, Inc.*, 312 NLRB 840, 840 (1993) (affirming the Regional Director's decision to include on-call employee in the unit even though the employee was able to decline work and did not call the employer every day to seek work); *Tri-State Transp. Co.*, 289 NLRB at 357 (the fact that the part-time employees frequently received fewer fringe benefits than full-time employees did not preclude inclusion, nor was the part-time employees' ability to reject work determinative of their employment status).

3. ***Contrary to the Union's Argument, QA Testers Are Not Less Skilled Than Other Development Employees.***

Throughout the Union's direct examination of its own witnesses, the Union repeatedly attempted to show that QA Testers require no specific skills to be hired and to perform their job duties and are less skilled than other job classifications at Raven.[20] The Union did this by asking questions like "was any applicant for QA tester position disqualified on basis of lack of skills in, for example, coding, animating, etcetera?" [Tr. 907:23-908:1], or "Are there any particular skills or degrees or experience that you are required to have in order to be hired as a QA tester? [Tr. 943:19-21]. While the need for particular skills upon hire may be limited for the entry-level QA Tester positions, the fact remains that QA Testers are, in fact, highly skilled at game play, bug identification, and creativity, and many Testers enter the company with a background in some relevant fields. The Union's own witnesses undermine the Union's contentions:

- Mr. Reel noted when asked what value he thought Testers brought to the game development process, "I believe their overall value is that they are able to think outside the box and find issues that other people aren't necessarily going to find. Issues that are going to crop up when you have millions and millions of people suddenly playing your game and you didn't foresee – testers' job is to minimize that so that the product looks the best in the public eye when it's released." (Tr. 896:22-897:4).

[20] Notably, this argument is counter to the public positions CWA has taken in respect to the gaming industry. See "We're not just playing video games. We are professionals and we are technical." https://slate.com/technology/2022/02/activision-raven-union-video-games-testers-qa.html?utm_medium=social&utm_campaign=traffic&utm_source=article&utm_content=twitter_share (last visited 3/15/2022);" "All work is skilled work." https://twitter.com/CWAUnion/status/1478822362023927810 (last visited 3/15/2022); "ABK management could follow Vodeo games lead." https://twitter.com/CODE_CWA/status/1473682383492767754 (last visited 3/15/2022); CWA employee Emma Kinema said the Vodeo result was "huge" because "all Job types in same union!" https://twitter.com/EmmaKinema/status/1471155364053733382 (last visited 3/15/2022).

- Mr. Reel also noted "Testers have a pretty intimate knowledge of the game on what I would call on a surface level. We're not looking at code or back end or anything like that, but we are very familiar with, you know, this gun should shoot this fast versus this gun should shoot slightly slower." (Tr. 886:6-11).
- Mr. Reel testified that other QA Testers utilized coding skills to develop weapons tools (Tr. 893:25-894:3).
- Mr. Reel testified that Testers need to have a "core knowledge of the systems in the game, but not necessarily how like the back end lighting coding and nitty gritty works. They need to know how game play works and how animation when they should play and things like that." (Tr. 898:7-11).
- When asked whether Testers would have to find creative ways to pressure test the game, Mr. Reel responded "Yes, yep…" Testers would "push things to their extreme hoping to show issues that we can report." (Tr. 898:17-24).
- Mr. Reel's resume notes that he is a "3D game developer skilled in creating game ready assets, and real time VFX for modern game engines" and code (R. Exh. 34; Tr. 870:11-23, 908:13-24).
- Ms. Hall testified that she is responsible for launching "some play test servers specifically for audio." (Tr. 925:23-25). And that doing this task, especially from home is "complicated." (Tr. 927:23).
- Ms. Hall testified that she drafted instructions for other QA testers (Tr. 970:23-971:3) and documentation for the Audio Department employees (Tr. 971:14-16).
- Ms. Hall also drafted a DVARS page relating to creating that is used by other departments as guidance (Tr. 978:2-18).

- Ms. Aigner testified that she had a background in animation and has an art portfolio demonstrating her work (Tr. 1004:18-19; 1054:12-14).
- Ms. Aigner maintains a bachelor's degree in cinema and film studies with a minor in art as well as an associate degree in animation visual effects (Tr. 1041:11-13).
- During Ms. Aigner's participation in the mentorship program, she created content that was "implemented into the game." (Tr. 1014:2-5).
- Ms. Aigner testified that as a QA Tester she creates content (Tr. 1059:9-11).
- Ms. Aigner provided concepts and feedback in game development (Tr. 1030:14-23, 1031:1-19).

4. ***Contrary To The Union's Argument, QA Testers Do Not Maintain Sufficiently Distinct Interests, Nor Do Distinct Interests Outweigh the Shared Interests of the Excluded Employees.***

Put simply, the Petitioner failed to sustain its burden – it is not even arguable that the petitioned-for employees share a sufficiently distinct community of interest, nor do any interests outweigh the shared interests, from the excluded employees. The evidence is undisputed that:

- **All** Raven studio employees work together throughout the development process while communicating continuously via the studio's various group-communication platforms, including e-mail, Slack, Confluence, and Jira (Tr. 44:3-45:1, 707:11-14, 818:21-25, 849:9-14, 866:2-15, 920:15-22, 964:20, 1048:15-17).
- **All** Raven employees are expected to identify bugs and issues in the game—not just **Embedded QA Testers** (Tr. 751:4-10, 764:10-14; *see* Tr. 210:14-211:22; R. Exhs. E-14, E-29).
- **All** employees at Raven are served by the same Human Resources team (Tr. 108:7-12).

- **All** Raven studio employees are subject to the same workplace policies and procedures (Tr. 108:13-15, 844:11-14).
- Employees from different departments are onboarded together and are **all** provided with company-wide policies, and company-wide trainings like anti-discrimination (Tr. 844:8-19).
- The Activision Handbook contains a large set of policies and procedures which apply to **all** Raven employees (Tr. 108:16-23).
- **All** full-time Raven employees, including **Embedded QA Testers**, undergo the same performance evaluation process (Tr. 108:24-109:3).
- **All** positions at Raven Software have minimum and maximum compensation bands (Tr. 623:1-6).
- **All** full-time Raven studio employees, including **Embedded QA Testers**, receive the same benefits options, including medical, vision, and dental (Tr. 104:10-105:1, 892:1-13; R. Exh. E-9).
- **Embedded QA Testers** are eligible for the same studio-wide bonus pool as **all** other full-time employees at Raven studio (Tr. 105:24-106:3).
- **Embedded QA Testers** also receive the same paid time off as **all** other full-time Raven studio employees (Tr. 122:3-11).
- **All** employees at Raven studio, including **Embedded QA Testers**, are also eligible to receive Raven Software "swag," such as shirts, company store credit, mouse pads, or chairs, as well as company gifts during the holidays (Tr. 106:4-25).

- **Embedded QA Testers**, along with **all** other Raven studio employees, are eligible for "crunch perks," or perks intended to support employees working overtime (Tr. 107:1-20).
- Upon hire, **all** employees, including **Embedded QA Testers**, have the same onboarding experience (Tr. 96:13-17, 844:8-11).
- **Embedded QA Testers** attend the same orientation trainings alongside employees across **all** departments (Tr. 96:13-17, 843:15-21).
- During the new hire orientation, **all** employees, including **Embedded QA Testers**, complete the same new hire paperwork, review the same Company policies, and receive the same anti-discrimination training together (Tr. 96:18-23, 844:5-14).
- Core hours for **all** employees are from 9:00 a.m. to 5:00 p.m., Monday through Friday (Tr. 97:5-6, 97:9-10, 853:24, 915: 8, 1003:16-18).
- Further, **all** non-exempt employees in the studio record time the same way via Workday, a time management system (Tr. 97:17-98:2, 154:3-14, 914:24-25, 983:10-12, 1003:12-14).
- **All** Raven employees utilize email, Zoom, Slack, and Jira to communicate with each other (Tr. 455:8-10, 696:2-13, 708:1-5, 818:21-25

IV. CONCLUSION

The undisputed evidence in this case proves that the petitioned-for employees do not share a community of interest that is sufficiently distinct from the other game development employees at Raven to warrant a separate bargaining unit. The Union has failed to meet its burden of proving otherwise. The record, instead, unequivocally establishes that excluded game

development employees at the Raven studio share an overwhelming community of interest with the petitioned-for employees such that a separate bargaining unit is not appropriate. The longstanding inclusion of QA employees with production employees makes this an easy case: the unit must consist of all game development employees at Raven. Excluding any of the game development employees would create an inappropriately fractured unit and would further contribute to the proliferation of inappropriately fractured units and fail to assure the employees the fullest freedom in exercising their Section 7 rights.

For all the aforementioned reasons, any unit found appropriate in this case must include all game development employees at the Raven studio. In the alternative, dismissal of the petition is appropriate pursuant to the workforce-in-flux doctrine because a standalone, separate QA department will cease to exist once the embedded testing model is fully implemented.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Employer's Post-Hearing Brief was e-filed with the Regional Director, Region 18, via the Board's electronic filing system on March 15, 2022 and served by email, on the same date, upon the following:

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Introduction

The Communications Workers of America, AFL-CIO ("CWA" or "the Union") submits this post-hearing brief regarding the election petition filed by CWA to represent Quality Assurance Testers ("QAs" or "QA testers") performing work for Activision Publishing, Inc. ("the Employer") at Raven Software ("Raven"), an Activision video game studio based in Middleton, Wisconsin. Case No. 18-RC-289570. The Employer alleges that the petitioned-for unit is inappropriate because it does not include 230 additional workers in nearly 100 additional classifications working in other departments at Raven. The Union maintains that the petitioned-for unit is appropriate because the QA testers share a community of interest among themselves, and those interests are sufficiently distinct from employees in other classifications. To the extent the Employer is arguing that circumstances have changed due to an announced reorganization, that announcement was in response to the Union's organizing activity at the Raven facility and was so nonspecific that the employees involved, including managers who testified at the hearing, can hardly explain how their work has or will change. Accordingly, CWA respectfully requests that the Regional Director approve the petitioned-for unit and direct a mail ballot election to be conducted as soon as is practicable, consistent with Aspirus Keweenaw, 370 NLRB No. 45 (2020).

Facts

The Employer's Operations

Raven is a video game development studio founded in 1990 and acquired by Activision Publishing, Inc. in 1997. Raven employs hundreds of employees, many of whom work on creating various features necessary to produce video games developed by the studio. Employees at Raven are involved in all stages of video game development. Currently, Raven works exclusively on development of the Call of Duty franchise, including the multiplayer video game, Warzone. See Tr. 24-26 (describing, in basic terms, Raven's history and operations); see also Tr. 26-32 (describing the basic functions of various Raven departments); Tr. 533-34 (reaffirming Raven works only on Call of Duty and Warzone).

The Employer's production of video games can be broken down into seven phases: concept, pre-production, production, alpha, beta, launch, and post-release. See Ex. E-5; see also Tr. 353-55 (describing the phases of production in the particular context of the Design department); Tr. 584-85 (noting that Warzone, as a "live" game, is going through these phases essentially continuously every four months). At the concept phase, ideas for a potential video game are explored to determine what shape the game will take. See Tr. 40 (describing concept phase). At the pre-production phase, those ideas are turned into game prototypes to further flesh out the game concepts. See Tr. 42 (describing pre-production phase). The game is created at the production phase, and it undergoes initial testing at the alpha phase. See Tr. 45, 47 (describing production and alpha phases). The game goes through additional testing at the beta phase to eliminate remaining bugs, and marketing and public relations materials are produced. See Tr. 49 (describing beta phase). At launch, the video game is released to the public. Work on the video game continues post-release as the video game is updated, typically in the form of "patches" or additional new content. See Tr. 52-53 (describing the work required at the post-release phase generically); Tr. 584-85.

While not corresponding exactly to a phase of production, QA testers' job responsibilities begin only after a feature of the game or version of the completed, or mostly completed, product has been developed. See, e.g., Tr. 1009-12; see generally Tr. 43-53 (suggesting QA testers' role relative to the phases of production has not fundamentally changed post-embed). In a basic sense, despite the iterative nature of the video game development process, QA testers' work cannot begin until a baseline level of development has already occurred. See Tr. 584-85 (stating that Warzone repeats the steps of the production process about every four months). Where a feature or product has not been developed to such a degree that it has made its way into a package build or published as a standalone feature, there can be no testing work for QAs to perform. See Tr. 1009-12 (providing an example to illustrate how complete a feature or product is once it reaches QA testers post-embed).

Petitioned-for Employees

The QA testers whom the Union seeks to represent are responsible for testing the features and content of the Employer's video games, the components of which are created by non-QA employees. See, e.g., Tr. 521-22, 815, 838, 943. Specifically, QA work involves testing the game, or a feature thereof, to ensure that there are no "bugs" preventing the game or feature from working as intended. See, e.g., Tr. 815-16, 825, 899. In order to reproduce and report these bugs, QA testers typically utilize "test plans," which help them systematically assess the game. A test plan is a spreadsheet that lists items that need to be checked to test a given feature of the game. QAs would execute the test plan by going through the list to check off whether or not a feature had been reviewed and whether or not there was a bug corresponding to that feature. Tr. 1017.

A significant portion of QAs' responsibilities involves collaboration on large-scale testing, such as daily "smokes" and "play tests." The smoke is a test QAs perform each morning

by loading the most updated game build and testing it to see if there are any obvious issues with any of the game features. Tr. 816-17, 1027. QAs also facilitate a daily play test of Warzone, which is a multiplayer game that requires 150 players to effectively test. Although employees across departments join the game for the play test, QAs perform specific testing duties, including organizing the play test, monitoring Slack channels where non-QAs could notify QA of bugs they found while playing the game, and recording the play test so that game developers could access features they designed and observe how they worked in live gameplay. Tr. 830-32. As they conduct this work, QA testers rely in part on tools that other employees do not consistently use, including two tools developed specifically for QA work. Tr. 819-20.

When QA employees find a bug, they typically enter that bug into Jira, a commercial project management program used throughout the Employer's operations for communication across departments, including tracking bugs. Tr. 44-45, 69, 824. The vast majority of bugs are entered into Jira by QAs. Indeed, between May 2021 and February 2022, QAs were consistently responsible for entering around 80% of all reported bugs into Jira. See Ex. E-29; see also Ex. E-14 (showing 83% between October 2021 and February 2022); Tr. 248-250 (explaining the exhibits). This was true even though QAs made up only 10-15% of the Employer's workforce and were not present to enter bug reports from roughly early December 2021 through late January 2022. Non-QA employees also use Jira and occasionally report bugs, but they do so in a different way and for a different purpose than QA testers. Tr. 866-67; see Tr. 940-41. Non-QA bug reports are typically less detailed than the reports submitted by QA testers. QAs follow a test plan which includes a number of specific details, including the project being worked on, bug location in the game world, repeatability of the bug, steps to reproduce the bug, and key words so that anyone searching in Jira for that particular type of bug would more easily be able to find the report. As for their purpose, non-QAs occasionally create bug reports as a placeholder for

themselves so that they can later resolve an issue they came across in the game. Tr. 866-67. For QAs, reporting and validating the resolution of bugs is their core job function.

Unlike other employees, QAs never fix the bugs that they enter into Jira. Tr. 825-26, 1014. QAs do not write code, create animations, or otherwise produce features of the game. See, e.g., Tr. 747-49, 1012-14. Rather, QAs test what other employees create, write reports concerning bugs they have found, and "validate" that bugs have been fixed by non-QA employees. See, e.g., Tr. 246, 523, 933. Systems accessed by QAs, including Jira and others mentioned over the course of the hearing, are used by QAs for testing purposes only, and QAs do not use Jira or other programs to create game content or otherwise develop the game. See, e.g., Tr. 925 (regarding purpose of use); Tr. 707-08 (same).

The nature of the work done by QAs is highly collaborative. Most QAs spend the vast majority of their work day on a daily Zoom call (referred to as a "floor call") with other QA employees to help facilitate their work. Tr. 828, 838, 1018; see Tr. 917-18 (contrasting QAs' daily meetings with weekly departmental check-ins); see generally Tr. 1016-24 (outlining how QA testers coordinate their work through Slack and other means). In addition to the floor call, QAs continue to interact regularly over Slack channels to discuss their work. Additionally, prior to the announcement of the embedded model, QA testers had a weekly 30-minute break, previously referred to as "beer o'clock." See Tr. 1035-36. These collaborative testing processes continue to exist subsequent to the Employer's announcement of the embedded tester model. See, e.g., Tr. 1016-17 (stating that QA testers work together every day even after the announcement).

While QAs do attend meetings and have access to Slack channels that coincide with non-QA departments, these are more limited in duration, frequency, and use than QA-specific collaboration. See, e.g., Tr. 707-08 (concerning use of specialized tools as well as tools for office

communication); Tr. 580-81 (Employer's witness stating, regarding the Audio department prior to the embedded model, that the most common interactions between QA testers and other employees involves communication around Jira tickets and "stand-up" meetings); Tr. 597-98 (suggesting the same applies in the context of QA testers' interactions with the associate game designer); see also Tr. 936-37, 957-58, & 1018-20 (detailing QA testers' post-embed interaction inside and outside of the QA department). For example, different departments have a regular meeting called a "stand up" at which employees would discuss what they were working on. Unlike the morning QA meetings, these stand up meetings were not daily and some departments had these conversations over Slack rather than getting together at a specified time. Some Raven employees were also invited to attend a nightly "burn down" meeting to discuss the day. Only the QA leads would attend this meeting from the QA department, and QA testers testified that they were never even invited to attend the burn down. Tr. 857-58, 1055; see Ex. E-13 (listing the burn down as optional for many employees). In addition, employees were invited to a project feedback meeting on Fridays at 4 PM, but no QAs attended this meeting as it conflicted with their 30-minute break (i.e., beer o'clock).

QAs receive work through a number of different mechanisms. They enter bugs they find during the smoke and daily play test into Jira. They receive testing tasks from their QA lead. They monitor Slack for bugs found by non-QAs during the daily play test. The QA department also receives some tasks via a department-specific e-mail address, known as "QARs." See, e.g., 816-17, 865-66. QARs are requests from non-QAs to have QA testers test a particular feature of the game and typically include basic details about the feature in question.

Discipline, timekeeping, and performance evaluation of QA testers is handled by the QA department supervisor, Robert Clark. See, e.g., Tr. 91, 127-28, 131, 144-45, 731-32; see also Ex. E-7 (listing Mr. Clark as QAs' supervisor). Mr. Clark has a daily meeting with QAs to discuss

their work, which has continued even after the Employer's purported reorganization of the QA department.

To prepare to work in a QA role, newly-hired QA employees have typically received a substantial portion of their training from other QAs, in separate training sessions not attended by non-QAs. Tr. 843-45, 945. This training does not equip QAs to work in other classifications, and they never do so. Tr. 836, 942 (noting QAs' inability to fill in for other employees). Similarly, other employees never fill in for QAs. Tr. 836-37, 940-43. There is also no evidence that any non-QA has ever permanently transferred into a QA role. Tr. 134-35, 143, 837; see Tr. 160 (testifying that temporary transfers between departments do not occur); see also Ex. E-7. Indeed, the overwhelming majority of Raven employees who could potentially transfer into QA would have to take a substantial pay cut to do so. Even after the pay increases QA employees received in December 2021, QA testers occupy the four lowest pay bands out of the 78 pay ranges corresponding to job classifications the Employer contends should be included in the unit. See Ex. E-30; see also Tr. 913-14; Tr. 114, 621-22.

The job posting for the embedded tester position underscores that the QA tester's role is to "verify[] functionality, data content, performance, usability/playability, and hardware/software compatibility," to document defects, and to provide feedback. Ex. E-27. While not characterized as "minimum requirements" in the posting, the job description lists basic PC knowledge (e.g., Microsoft Word and Excel) and a high school diploma or its equivalent under the section titled "Player Profile." A bachelor's degree, an associate's degree, and work experience in a related field appear to be considered pluses; experience in the video game industry is not a requirement applied to QA testers. See, e.g., Tr. 493-94. This is consistent with what the Employer expected of prospective QA testers prior to the announcement of the embedded model. Tr. 842.

The Employer's human resources information system is Workday. This system is used to track information about QAs and other employees, including job descriptions, transfers, time off, job classification, etc. Workday was used to notify QA testers that they were being converted to full-time employees. Workday also contains information regarding the assigned supervisor for each employee. In the case of QA testers, Robert Clark is their designated manager. See, e.g., Tr. 91-92 (performance reviews and time reporting performed by the QA supervisor); Tr. 93 (transfer information); Tr. 127 (discipline and scheduling of QAs performed by the QA supervisor).

Prior to COVID-19 necessitating work-from-home arrangements, QA testers sat in clustered cubicles on the second floor of the Employer's facility, with offices around the outside of the floor occupied primarily by Art department employees; the only QA occupying an office pre-pandemic was the QA supervisor, Mr. Clark. See Tr. 345, 477; Tr. 955 (QA tester stating that, by virtue of the pandemic, she was afforded an office). Similarly, QAs had "unofficial" conference and break rooms on the second floor, meaning that while they were available to other employees, QAs were the primary users of those rooms by nature of the office layout. See Tr. 956-57.

Excluded Classifications

The Employer asserts that the only appropriate unit must include approximately 230 additional employees in 93 additional classifications throughout the Employer's operation. None of these additional classifications performs QA work, and none is supervised by Mr. Clark. Tr. 64 (concerning Mr. Clark's supervision of QAs exclusively); Tr. 836-37, 942-43 (concerning lack of interchange). The QA tester position reports bugs, tests bugs, and validates that bugs are fixed by other studio employees. Most if not all of the other classifications the Employer seeks to include are involved in creating game assets and features that go into the finished game product.

Said a different way, QAs test features and game builds; non-QAs create features and game builds.

Requirements for jobs in classifications excluded from the Union's petition generally are much higher than those applied to QAs. Even at the entry level, job descriptions indicate that applicants will be required to submit portfolios, have prior experience in the video game industry, and/or demonstrate skills with specialized tools. See, e.g., Ex. E-2 at 84-85 (associate lighting artist posting); Ex. E-2 at 7-8 (associate concept artist posting). The Junior Animator, for example, is expected to have a bachelor's degree in an animation-related field, more than seven years of relevant experience, and proficiency in at least one of three animating tools; the position also requires a portfolio or test as part of the application process. Ex. E-2 at 92-93. Another "junior level" job posting, for the Production Coordinator, describes knowledge of four animating tools as "integral for [the applicant's] success," and describes knowledge in two additional production tools as a "huge plus." Ex. E-2 at 119-20. The responsibilities of the job clearly indicate that 3D animation skills, among other skills, are essential. Taking a final example of a "junior level" position, the job description for the associate software engineer requires fluency in C++, a programming language. Ex. E-2 at 66. The job responsibilities appear to primarily involve designing and writing software and implementing game systems.

Non-QAs make more–and often significantly more–than the rate paid to QA testers. Although the Employer provided salary information for the QA Functional Tester II position, which full-time employees ("FTEs") were promoted to in December 2021, indicating that the salary range for that position was up to $51,000 annually, as a practical matter most QAs are making $18.50 hourly, or $38,480 annually, which is well below the maximum range for a QA Functional Tester I position, the position below the QAs' current designation. See Tr. 914, 1001-02. That amount is also well below the *minimum salary for all other Employer*

classifications. Ex. 30. Additionally, many of the classifications excluded from the Union's petition are salaried in contrast to the QA tester position, which is hourly. See Ex. E-30 & 31.

QAs are also different from other employee classifications with respect to job codes and experience-level designations related to their job titles. The Employer uses job codes for each position that contain the designation "P" for professional, "M" for managerial, and "S" for support. QA testers are coded as S for support. See Tr. 635 ("QAs are – it's not a professional level, it's support level."). No petitioned-for QA is coded as M or P, even QA leads, and no excluded non-QA is coded as S in the Employer's human resources system. See Ex. E-7 & Tr. 648. Furthermore, non-QA positions have titles that follow a progression starting with a junior or entry level designation and moving through other designations, such as associate, senior, and expert level. Tr. 365-66, 407. QA levels do not track those designations, and include QA I, II, III, and IV. The only other job classification that uses numerical designations is the QA Engineer II, which is also in the QA department. As Exhibit E-7 illustrates, the Employer's own internal classification system draws a fundamental distinction between QAs and the excluded classifications and illustrates the limits of long-term career prospects within QA. See Ex. E-7; Tr. 154-56 (describing job codes and indicating some classifications the Employer proposed to include in the unit are management-track or senior-level).

Recent Employer Actions

Before December 2021, almost all QAs–upwards of 90%–were contract workers. Tr. 98-101, 122, 643, 1001; Ex. E-8. In December 2021, the Employer announced its intention to convert some QAs to FTEs. Tr. 1001-02. At that time, the Employer furnished documents to be signed or electronically acknowledged in Workday by the QAs who had been selected to convert to FTE status. Tr. 61, 1002. These documents stated that the affected QAs' official title would be "QA Functional Tester II" and noted that the workers would "continue reporting to Robert

Clark." Ex. E-8; see, e.g., Tr. 61; see also Ex. E-7 (listing Mr. Clark as supervisor of QA testers). At the same time it converted some QAs, the Employer announced it would lay off twelve QA testers. Tr. 128-29; see Tr. 905, 952.

The QA team responded by going on strike, which lasted about seven weeks into late January 2022. See Tr. 249, 863, 1001-02. On the Friday before the strike ended, the QA testers requested that the Employer voluntarily recognize the Union as their collective bargaining representative. Tr. 62, 864-65, 913. On Monday (i.e., the next work day), the QA testers ended their strike and returned to work. Tr. 864-65, 913. That same day, QAs were called first into a QA-only meeting, and then into an Employer-wide "town hall" meeting. Tr. 863, 916, 1009. The QA-only meeting lasted only about five or ten minutes. Tr. 919. In that meeting, QAs were informed that they would now be "embedded testers" within different departments at the company. Tr. 916-17. Unlike their conversion to FTEs, QAs were not provided with any documentation reflecting that their position had changed. Tr. 917-18; see Tr. 810-11 (former employee describing the process of being converted to a FTE as a QA lead, which included signing paperwork acknowledging the change).

While town hall meetings are common at Raven, these meetings are typically announced a week in advance, and employees are afforded an opportunity to submit questions in advance. Tr. 859-60. On the QA testers' first day back from strike, employees received a last-minute invitation for the town hall meeting about an hour before it began. Tr. 860. At the meeting, the Employer announced that QA testers had returned from strike and that they would be converted to embedded testers. Tr. 861. QA testers received little to no information from management about what the purported change would mean for their day-to-day work or their working conditions more generally. Tr. 862, 917-18. This remains largely unchanged to date. In fact,

one QA testified that they learned some details about their terms and conditions of employment at the hearing in this case that they had not heard previously. Tr. 946.

The Employer stated that, as a result of the change to an "embedded" model, QAs are now working in closer collaboration with other employees. As of the hearing, however, witnesses were still unclear about the most basic elements of the embedded model and how it was supposed to function. See, e.g., Tr. 920, 935, 944-46. In the roughly three weeks that passed between the Employer's announcement and the hearing, one QA tester had been assigned and reassigned to three different departments. Tr. 1004. She had spent the majority of the weeks preceding the hearing assigned to the Art department. Tr. 1004, 1006. However, she reported that her daily interactions with non-QAs in this department were effectively limited to a single 10- to 15-minute group Zoom call. Tr. 1018. When it came to completing work tasks, this QA tester performed that work collaboratively with other QAs, not with the non-QA members of her assigned department. Tr. 1016-18. In fact, she estimated spending 80 to 90% of her work day in the "floor call" with other QAs. Tr. 1018. The same QA tester, importantly, also testified that after the embedded model announcement, QA testers' work continued to occur toward the end of the development process, after a feature or product has undergone a significant amount of development. See Tr. 1009-12.

Although the Employer claims to have implemented a "dual reporting system" in which QAs receive day-to-day feedback from within their assigned department, regardless of their assigned department, all QA testers still report to QA Supervisor Robert Clark for purposes of timekeeping, discipline, and performance evaluation. Tr. 91-92, 944; cf. Tr. 276 (indicating a dual reporting system was already in place pre-embed). When a QA tester was asked who she would turn to with a question related to her core job duties (i.e., reporting, testing, and validating), she testified that she would take these questions to Mr. Clark. Tr. 944. Even toward

the close of the hearing, having heard several days of testimony from the Employer's witnesses, QAs continued to lack a clear understanding of their roles within an embedded model. See, e.g., Tr. 944-45 ("I wouldn't say that I have … a concrete plan or understanding of, like, what my entire day is supposed to look like regularly."); Tr. 1015-16 (indicating a lack of clarity surrounding expectations of skill development going forward).

Argument

To determine whether a proposed unit is appropriate, the Board first considers whether the petitioned-for employees share a community of interest.[1] The Boeing Co., 368 NLRB No. 67, slip op. at 3 (2019) (outlining a three-step unit appropriateness inquiry). Importantly, "[t]he Board's inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends." Id.; see R & D Trucking, 327 NLRB 531, 533 (1999) (noting that the Board generally favors the smallest appropriate unit encompassing the petitioned-for employees). At the second step, the Board analyzes "whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit." PCC Structurals, Inc., 365 NLRB No. 160 (2017), slip op. at 11 (emphasis in original). The Board assesses whether the excluded employees 1) are organized into a separate department; 2) have distinct skills and training; 3) have distinct job functions and perform distinct work; 4) are functionally integrated with other employees; 5) have frequent contact with other employees; 6) interchange with other employees; 7) have distinct terms and conditions of employment; and 8) are separately supervised. Id. (citing United Operations, 338 NLRB 123, 123 (2002)). No single factor is controlling; the

[1] To establish an internal community of interest, the Board considers the same factors listed in the ensuing paragraph as applied to members of the petitioned-for unit.

Board considers all factors together. Id. Third and finally, the Board accounts for industry-specific guidelines.[2]

Nothing in the Act requires that the petitioned-for unit be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, what the Act requires is only that the unit be "appropriate" to ensure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." See 29 U.S.C. § 159(a) & (b); see also Morand Bros. Beverage Co., 91 NLRB 409, 417–418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951); Bartlett Collins Co., 334 NLRB 484 (2001); Overnite Transportation Co., 322 NLRB 723 (1996); Federal Electric Corp., 157 NLRB 1130, 1132 (1966); Parsons Investment Co., 152 NLRB 192, 193 fn. 1 (1965); Capital Bakers, Inc., 168 NLRB 904, 905 (1968); National Cash Register Co., 166 NLRB 173, 174 (1967); NLRB v. Carson Cable TV, 795 F.2d 879, 887 (9th Cir. 1986); Dezcon, Inc., 295 NLRB 109, 111 (1989).

Applying these factors to this case shows that the employees in the petitioned-for unit share a community of interest sufficiently distinct from the excluded employees to render the petitioned-for unit appropriate. Because the Employer does not argue QA testers lack an internal community of interest, analysis of the factors below focuses on the distinction between the petitioned-for employees and employees in the excluded classifications. Similarly, the factor concerning industry standards does not warrant extended attention because there are no informative standards applicable to the video game industry.

The Purported Reorganization Did Not Fundamentally Change QAs' Work.

[2] Under the Board's previous unit appropriateness standard set out in Specialty Healthcare, 357 NLRB 934 (2011), the result in this case would be the same despite differences in the analytical framework. Analysis of the PCC Structurals factors as applied to these facts demonstrates that the petitioned-for workers lack an "overwhelming community of interest" with those excluded from the petition. See Specialty Healthcare, 357 NLRB at 934. Although the analysis in this brief deals with extant law, the Union maintains that PCC Structurals, as modified by Boeing, was wrongly decided and that Specialty Healthcare supplies the appropriate analytical framework.

Preliminarily, the Employer argues its operations have fundamentally changed due to a recent reorganization, but its argument must be rejected. On January 24, 2022, the Employer ostensibly embedded QA testers within other departments, but these employees continue to report to a QA supervisor, continue to interact most frequently with other QA testers, and continue to make less money than their colleagues. The nominal changes the Employer claims to have made do not appear to have been implemented in an organized way or in a manner that is actually experienced by the employees. Indeed, QA testers have difficulty characterizing the nature of the changes and what they mean for their day-to-day work. See, e.g., Tr. 920-22.

Following the purported reorganization, QA testers were advised to continue reporting to the same QA department supervisor, who does not supervise non-QA employees, as they did previously. See Casino Aztar, 349 NLRB 603, 607 fn. 11 (2007) (internal citation omitted); Executive Resources Ass'n, 301 NLRB 400, 402 (1991); see also Tr. 276 (stating that, before the embedded model, the QA department effectively already had a dual reporting structure). Many QAs have received few, if any, assignments from the department in which they have been embedded, and QA testers continue to spend the majority of their time working with one another, as they did previously. See, e.g., Tr. 921 (stating that most of the tester's requests for work from the Audio department had taken place during the course of the hearing); Tr. 1016-17 (explaining that QAs work together "every single day" pre- and post-embed); Tr. 1018 (testifying that embedded QA tester spends "80 to 90 percent" of her time in a Zoom call with other QAs). Accordingly, the Board's precedents concerning units tracking administrative functions or administrative groups within the employer's operation apply and favor exclusion of the additional classifications. See, e.g., Buckhorn, 343 NLRB 201, 202 (2004); see also Ex. E-4 & Tr. 38 (showing the QA department as distinct prior to the embedding).

Even assuming *arguendo* the Employer can be said to have implemented these changes, they should be disregarded as pretextual, having been made in response to union activity for the purpose of undermining the workers' organizing efforts. In the several months preceding the Employer's announcement of the "embedded model," employees were engaging in union activity openly on the Employer's communication platforms (e.g., Slack) and were engaging in protected concerted activity such as walk-outs. See Tr. 913 (mentioning the strike that workers initiated after the Company announced layoffs). The Employer announced it was implementing the embedded model, effective immediately, via e-mail three days after the workers requested voluntary recognition. One day after the announcement, the Union filed its petition with the Board. See Tr. 859-62, 917-19 (describing a same-day, hastily organized all-staff "town hall" meeting announcing the changes referred to in the e-mail).

It bears underscoring that the purported changes described in the embedded model e-mail, at the town hall meeting, and at the hearing are superficial and do not change the essence of the work performed by QA testers. Opici Family Distributing, 371 NLRB No. 30 (2021), slip op. at 2-3 (eliciting a distinction between official and operational realities); see Ex. E-7 & Tr. 91, 131 (detailing the ongoing supervision of QAs by the QA supervisor, Mr. Clark); see also Tr. 239, 324 (outlining the views of the current Production department head with respect to supervision); Tr. 433-34 (Art department), 436 (Design department), & 439 (Audio department); Tr. 1016-17 (stating that QAs work closely together every day, pre- and post-embed), 1009-12, 1018-20 (providing additional detail post-embed and clarifying that QAs' work continues to take place toward the end of the development process); Tr. 276 (indicating that a dual reporting structure existed within the QA department even before the embed).

Even the visual aids presented by the Employer during the course of the hearing do not accurately reflect the realities of the workplace. One exhibit, for example, suggests QA testers

have been embedded in the IT and Marketing departments when they have not. Ex. E-4. The rushed and ill-defined nature of these alleged changes, particularly as experienced by the workers, supports the notion that they were responsive to union activity and should be disregarded for the purposes of the unit appropriateness analysis. See, e.g., Tr. 944-45 (speaking to how lacking in detail the changes were as described to one QA tester); Tr. 1004-09, 1036-39 (describing the dysfunction one QA tester has experienced since the announcement).

Separate Departments & Supervision

The Board places significant weight on the fact that a petitioned-for unit conforms to an administrative grouping performing a discrete administrative function within the Employer's operation, particularly where there is a lack of bargaining history. See, e.g., Buckhorn, 343 NLRB at 202 (citing American Cyanamid Co., 131 NLRB 909 (1961)); Home Depot USA, 331 NLRB 1289, 1289-1291 (2000) (noting that, under certain circumstances, the Board will approve a unit even though employees within the petitioned-for administrative grouping are excluded).

Additionally, shared supervision tends to support a finding that the excluded classifications share a community of interest with the petitioned-for employees but is not determinative. Casino Aztar, 349 NLRB at 607 fn. 11 (internal citation omitted); United Operations, 338 NLRB at 125. The most relevant type of supervision concerns day-to-day operations such as assigning work, scheduling, and providing routine guidance. Executive Resources Ass'n, 301 NLRB at 402; see also Opici Family Distributing, 371 NLRB, slip op. at 2-3 (looking past apparent or "official" divisions to consider the operational reality).

QA testers are easily identified as an administrative grouping within the Employer's operation that perform a distinct administrative function. As is discussed at greater length in the context of other factors in the PCC Structurals analysis, QA testers perform a distinct part of the process of video game development at the Employer's studio that is separate and apart from the

work of other employees at Raven (i.e., testing versus creating). See Seagate US LLC, 18-RC-283636 at 8 (Nov. 30, 2021) (observing that workers performing a "specific phase of the work" tends to show a lack of community of interest). Testers in the QA department do not develop the underlying product (e.g., designing the video game's graphics, building its narrative, animating its levels, engineering its sounds, etc.). Instead, QA testers test and troubleshoot content created by other employees at the studio to identify and report bugs for correction by game developers prior to launch. Submission of QARs illustrates this principle: If a non-QA identifies a perceived issue with the feature or product they created, that developer may engage the QA department as a whole by submitting a QAR or QA request so that a QA can test the perceived issue. Tr. 865-66; see Seagate, 18-RC-283636 at 8 (concerning specific phases even where work is performed on the same project).

The QA department has a daily morning meeting and daily maintains an open Zoom or floor call where QA testers can coordinate with one another on completion of testing tasks. Opici Family Distributing, 371 NLRB, slip op. at 2-3. This is in contrast to less-frequent meetings and contact within the QA testers' embedded departments. QA testers work together the vast majority of the time, and do so largely independent of employees in other departments. QA testers' location within the Employer's facility pre-pandemic further supports this conclusion, particularly their use of common conference and break rooms and the position of their cubicles apart from other employees. Their weekly QA-specific break, beer o'clock, also tends to show that they constitute a coherent department separate from other departments.

Regarding supervision, QAs continue to report to the QA Supervisor, Mr. Clark. QAs meet with Mr. Clark each morning to discuss their work, and Mr. Clark approves QAs' time off. Employee discipline and performance evaluations are administered by Mr. Clark, and he is listed in the Employer's Workday system as the manager of all QAs working at Raven. One QA also

testified that if they had a substantive question about their work they would go to Mr. Clark rather than the lead in the department in which they were embedded. To the extent that the Employer argues that embedded QA testers receive daily tasks from their new department leads, the frequency and quality of this asserted daily supervision is inconsistent and confusing at best. And, as a practical matter, QAs have always received testing requests, in the form of QARs, from other departments through e-mail and Jira. However, a request from another department to test a specific feature of the game does not amount to supervision.

Distinct Skills & Training

A showing that employees excluded from the petitioned-for unit have skills or training distinct from QA testers supports the validity of their exclusion from the unit. See Casino Aztar, 349 NLRB at 604 (finding that restaurant and catering employees had been improperly excluded from a petition seeking to represent beverage employees in part because serving food and drinks to customers requires the same amount of skill); J.C. Penney Co., Inc., 328 NLRB 766, 766-767 (1999) (noting that catalog fulfillment employees and telemarketing employees had substantially similar skills and performed similar functions); Hilton Hotel Corp., 287 NLRB 359, 360 (1987) (remarking that periodic, temporary, "two-way" transfers suggests similarity of skills); Gustave Fischer, Inc., 256 NLRB 1069, 1069 fn. 5 (1981) (describing utilization of skills, along with plant organization, as "[p]articularly important in considering whether the unit sought is appropriate") (internal citation omitted). Conversely, evidence that disputed employees must meet similar requirements to obtain employment, that they have similar job descriptions or licensure requirements, that they participate in the same employer training programs, or that they use similar equipment supports a finding of similarity of skills and training favoring a finding

that the excluded employees share a community of interest with the petitioned-for unit. See Brand Precision Serv., 313 NLRB 657 (1994).

QA testers apply different skills relative to the employees excluded from the petitioned-for unit, favoring exclusion of the additional classifications. QA testers are not subject to the same requirements to obtain employment at Raven as other departments. According to the Employer's job description for the embedded tester position, the attributes sought in the player profile (or minimum requirements) section included experience with console gaming, ability to play first-person shooter games, attention to detail, and a high school diploma or equivalent. A bachelor's degree was listed as a plus. By contrast, other entry level positions required significantly more specific education, training, and experience. In fact, of the more than 70 job descriptions the Employer entered into evidence at the hearing, only one–the embedded tester–had a minimum educational requirement of a high school diploma or equivalent. All other positions required college education or specialized training, years of relevant experience, familiarity or proficiency in certain programming languages or software, and/or the submission of a portfolio or content reel containing relevant examples of the applicant's work. The only other position that did not require relevant experience or education was the Dev Support Technician position–job profile name QA Engineer–which has no one employed in that position and is, in any case, within the QA department. Similarly, unlike many classifications, prospective QA testers are not required to submit a portfolio or to complete a test as part of their application process. See, e.g., Tr. 120; see generally Brand Precision Serv., 313 NLRB 657.

QA testers also receive separate training from other employees at Raven. Training for new QAs are conducted by other QAs to familiarize them with how to detect and report a bug in the game. These QA training sessions are not conducted or attended by non-QA employees. See

Tr. 836-37, 942; Tr. 845-50 (describing a QA training and explaining that only QA testers participated); see also Ex. E-16 (a slideshow of the training described); see generally Brand Precision Serv., 313 NLRB 657.

Although QAs have been given access to certain software tools used by other departments at Raven, they do not use those tools to perform the work of other job classifications. For example, QA testers have been given access to Maya, a 3D animation tool, but QAs do not create 3D animations. Their job is to test and report bugs and validate bug fixes done by other departments. So, to the extent that QAs have been given access to additional tools following implementation of the embedded model, they are not using those tools in the same way, if at all, as other departments.

QA testers never perform the work of employees in other departments or job classifications at Raven. Cf. Hilton Hotel Corp., 287 NLRB at 360 (observing that temporary, two-way transfers suggest similarity of skills). While an animator might use particular software and development tools to create character designs or landscapes, for example, a QA tester's sole responsibility remains spotting elusive flaws in those designs. Tr. 815-16; see, e.g., Tr. 821-22 (concerning programming and design skills and tools employed by developers) & 841-42 (concerning educational requirements and certifications for QA testers). The same is true when compared to an audio designer. Instead of designing game audio, QAs test and troubleshoot audio created by other employees in order to determine whether the design operates as intended. The skills and training of the QA tester, in other words, do not lend themselves to designing, engineering, or producing the feature or product in the first place. This remains true even after some QA testers were, or may at some point be, granted access to additional software tools used in other departments.

While some employees in other departments might be capable of writing a QA-type report on a particular animation, design, or engineering issue, it is rare for them to actually do so. When this occurs, the relatively low level of detail and sophistication in a bug report written by a developer underscores differences between developers and QA testers, who are primarily responsible for drafting detailed, thorough bug reports which can later be acted upon by developers. Tr. 866-67.

To the extent QA testers possess overlapping skills or specialized training with employees in other job classifications, that fact is irrelevant because what is to be assessed is whether the petitioned-for employees are sufficiently distinct from the excluded employees, not whether any individual employee has skills and training that exceed the requirements of the QA job. See, e.g., Tr. 842. Although some QA testers may have education or experience that goes beyond what is necessary for a QA tester position, they will have no opportunity to apply those skills or training as they report, test, and validate issues with the product. Gustave Fischer, Inc., 256 NLRB at 1069 fn. 5 (referring to *utilization* of skills) (emphasis added); J.C. Penney Co., 328 NLRB at 766-767 (same); see Tr. 1004.

The Employer's attempt to establish that QA testers *do* share skills with employees in other classifications by references to individual QA testers' resumes and LinkedIn profiles misses the mark. See Tr. 1051-53. What is relevant here are the required skills and training for the positions in the petitioned-for unit and for the excluded employees, not the extent to which any individual employee has chosen to pursue their interests in developing skills unrelated to their current job functions. Gustave Fischer, Inc., 256 NLRB at 1069 fn. 5; J.C. Penney Co., 328 NLRB at 766-767. Thus, to the extent that QA testers do possess skills which overlap with those of employees in other classifications, those skills are not required or applied in the QAs' role as a tester. See, e.g., Tr. 1004. Skills in animation or coding, for example, are not listed in the

requirements in the embedded tester job description, and a lack of such proficiency is not relevant to the hiring decision with regard to the QA tester position. See Tr. 907-08, 929-30, & 1037-38.

The Employer's argument that there are no minimum job requirements for any given job classification lacks credibility. See, e.g., Tr. 305 (Employer's witness testifying that QA testers would not be required to be able to play first-person shooter video games to be considered for a position, despite it being listed as a requirement); Tr. 639-41 (Employer's witness stating, in reference to job postings' listed requirements: "These are an ideal list of credentials, but in no way, shape, or form does that automatically screen people out of the hiring process"). Its claims are disingenuous and misleading and appear to imply that proficiency in specialized tools is necessary to perform QA testers' work; that proficiency of this kind is part of hiring decisions made concerning applicants for QA tester positions; and that specialized skills and qualifications were carefully considered when assigning existing QA testers to an embedded department. See Tr. 1037-38 (QA employee testifying that she "was never interviewed or asked [about] previous ability or skills" before she was assigned to an embedded department). The job descriptions, which the Employer itself entered into evidence, make clear that there are, indeed, minimum requirements for each job that differ greatly based on job duties and necessary level of experience.

Distinct Job Functions & Work

The Board has held that, in order to support the inclusion of the disputed classifications, there must be evidence of a "high degree of overlap" in job functions. See Phoenician, 308 NLRB 826, 827-828 (1992) (finding that a unit of golf course maintenance employees cannot exclude landscaping employees because of a high degree of overlap in job functions); Executive Resources Ass'n, 301 NLRB at 401 (lack of significant interchange is a "strong indicator" that

the groups have distinct communities of interest) (internal citation omitted); Hilton Hotel Corp., 287 NLRB at 360 (noting that frequent, regular interchange among employees in a petitioned-for unit "suggest[s] blurred departmental lines and a truly fluid workforce with roughly comparable skills"); cf. Hydro Constructors, Inc., 168 NLRB 105, 105 (1967) (finding, in the construction industry, that employees in different classifications were hired for distinct purposes and performed distinct functions).

In other words, occasional sharing of limited duties is insufficient to show a high degree of overlap in job functions. If the petitioned-for unit can be distinguished from the excluded employees on the basis of job duties or skills, this factor weighs against including all employees in one unit. See, e.g., Impact Site Works, LLC, 2021 WL 2006048 (N.L.R.B. May 18, 2021) (finding distinct job functions where equipment operators spent the majority of their time with heavy equipment, whereas junior operators only performed that work on isolated occasions); Casino Aztar, 349 NLRB at 604-605; Davidson Hotel, 371 NLRB No. 44 (2021), slip op. at 3 (noting that employees' "specific roles are discrete–the housekeeping employees keep the hotel clean, the food and beverage employees prepare and serve food and beverages, and the front desk employees interface with the guests.").

Here, QA testers perform essentially different functions in the Employer's process from developers (i.e., non-QAs). Davidson Hotel, 371 NLRB, slip op. at 3; Impact Site Works, 2021 WL 2006048; Hydro Constructors, 168 NLRB at 105; see Tr. 818 (describing QAs' use of the term "developers" to distinguish between themselves and employees outside the QA department); Tr. 246 (Employer's witness using the term in the same fashion as QAs); cf. Tr. 576-77 (Employer's witness stating, "Everyone at Raven is a developer."). QA testers, as previously mentioned, never stand in the shoes of other employees, and other employees only rarely perform QA-type functions, if at all. See Tr. 836-37, 942-43; cf. Human Resources Ass'n,

301 NLRB at 401. There are no examples of temporary transfers into or out of the QA department; permanent transfers out of the QA department are uncommon, and permanent transfers into the QA department by non-QAs are nonexistent.[3] See Hilton Hotel Corp., 287 NLRB at 360.

Rather than submit changes to features or products, as a developer involved in animation or production might, QAs solely test changes made to those features and products. See Hydro Constructors, 168 NLRB at 105; Davidson Hotel, 371 NLRB, slip op. at 3; see also, e.g., Tr. 572-73 (Employer's witness stating that approximately 75% or more of a QA tester's duties post-embed during the pre-production and production phases is testing and validating); Tr. 583-86 (applying roughly the same 75% or more figure to post-production phase); Tr. 604-05 (applying roughly the same figure in the context of QAs' duties in the Art department post-embed). QA testers' responsibility is to identify, report, and test bugs; in other words, to ensure that a feature or product looks and functions as the developers intended, and to detail their findings when it does not. QA work particularly focuses on deeply hidden, non-obvious issues. For example, after an animator creates an animation within a video game, a QA department employee (or, often, a team of QA employees) tests the animation and identifies issues. This is a difference in kind, rather than degree, relative to employees in the classifications the Employer argues must be included in the unit (e.g., lighting artists, audio designers and engineers, motion capture technicians, etc.). See Hydro Constructors, 168 NLRB at 105; Davidson Hotel, 371 NLRB, slip op. at 3; see generally Ex. E-2 (listing job postings for positions the Employer

[3] Ex. E-7 was introduced by the Employer for the ostensible purpose of establishing that transfers into and out of the QA department were common. However, of the approximately 19 examples provided by the Employer in Ex. E-7, several of the transfers appear to be from a QA department of another Activision studio in Minnesota into the QA department at Raven. This is difficult to verify due to the unwieldiness of the document introduced by the Employer. See also Tr. 134-35 (Employer's witness testifying that Ex. E-7 does not reflect any non-QAs transferring into QA); Tr. 837 (stating that transfers from other Raven departments into QA are essentially non-existent).

proposes to include in the unit). Those employees are primarily involved in designing and constructing the product or feature, whereas QA testers' work almost exclusively involves ensuring the product or feature works as the developer intended. This is a far cry from the "truly fluid workforce" that would support inclusion of the classifications in the departments excluded from the petition. See Hilton Hotel Corp., 287 NLRB at 360; cf. Phoenician, 308 NLRB at 827-828 (referring to a high degree of overlap).

Prior to the announcement of the embedded model, most QA testers used software and tools that were distinct from those used by other employees. Although the Employer's purported reorganization expands the number of QAs who could potentially use software and tools more commonly used by employees in other departments, in reality many QAs do not actually access or use the array of software tools detailed by the Employer. See Impact Site Works, 2021 WL 2006048. And, because of the rushed nature and suspicious timing of the purported reorganization, this fact should not be afforded much weight to the extent it is valid. See, e.g., Tr. 707 (Employer's witness stating the QA tester embedded in the Animation department "will have access to" an animation-specific tool, Maya, in the future).

This conclusion is buttressed by the fact that QA testers would use the tools to perform a fundamentally different function than other employees do within the Employer's production process (i.e., production versus testing). See Hydro Constructors, 168 NLRB at 105; see also, e.g., Tr. 924 (stating that, even where developer tools are expected to be introduced to QAs, their use would be testing-related); Tr. 765-66 (Employer's witness stating that QAs "would use Maya to, first of all, test"); Tr. 943, 1012-13 (drawing a distinction between making changes and testing those changes). It bears underscoring that QA testers' use of these tools is invariably for a different purpose than developers' use: Where developers use these tools to animate, for example, QA employees' use would be for the purpose of reporting, testing, and validating. See,

e.g., Tr. 925. Even where QA employees use the same tools as developers, QA employees' use of those tools is comparatively limited, particularly with respect to specialized tools (e.g., the animation tool Maya), or is used for interoffice communication (e.g., Jira, Slack). Impact Site Works, 2021 WL 2006048; see, e.g., Tr. 707-08.

The Employer's assertion that QA testers contribute to the development of games at the concept stage is, at best, insignificant and, at worst, misleading. See Tr. 501-02 (alluding to one example and misidentifying the QA tester responsible for the contribution, which concerned gender representation related to marijuana); Ex. E-32 & Tr. 727-29 (concerning the second example involving classic weapons). The Employer has been producing video games for more than three decades, and it only offered two specific examples of QA testers contributing ideas to video game development at the concept stage. See Tr. 533-34 (stating that Raven also incorporates suggestions from members of the public). Contributing at the concept stage of development is not part of QA testers' job duties, and no QA tester has been disciplined for failing to contribute at the concept stage; one of the main brainstorming meetings, in fact, conflicted with QAs' scheduled break. Tr. 1030-36 (describing the timing conflict and the contribution of one QA tester at the concept stage); Tr. 780 (Employer's witness testifying that a QA would never be disciplined for not contributing to content). As such, the specific examples cited by the Employer should be afforded little weight or, more appropriately, no weight whatsoever.

Frequency of Contact, Functional Integration, & Engagement with Other Employees

Frequent work-related contact between employees included in the petitioned-for unit and those excluded from the petition supports a finding that there is a community of interest shared between the groups. See D & L Transp., 324 NLRB 160, 161 (1997) (sporadic, incidental contact does not support finding a community of interest); cf. Capital Coors Co., 309 NLRB 322,

325 (1992) (regular contact and interchange supports a finding of community of interest); Casino Aztar, 349 NLRB at 605-606 (regular contact among food service employees).

Relatedly, with respect to functional integration, the Board has found evidence that employees have frequent contact, work side-by-side, and perform similar functions relevant to the inquiry. See Transerv Systems, 311 NLRB 766, 766 (1993); see also Seagate, 18-RC-283636 at 8 (finding that functional integration is lacking even on projects involving multiple trades where one set of workers performs a "specific phase of the work" distinct from the other). An employer's assertion that employees work together to achieve the employer's overall objective is generally not persuasive. See, e.g., Davidson Hotel, 371 NLRB, slip op. at 3 ("[T]he employees across the groups do have work related contact with one another and, in the broadest sense, are working toward a common goal of a satisfactory customer experience, but their specific roles are discrete–the housekeeping employees keep the hotel clean, the food and beverage employees prepare and serve food and beverages, and the front desk employees interface with the guests.").

In this case, prior to the COVID-19 pandemic necessitating remote work, the QA department occupied its own section of the second floor at the Employer's facility and was contained in cubicles separate from other employees; as of the conclusion of the hearing, there had been no detailed return-to-office announcement concerning the QA employees' physical location in the Employer's office. Transerv Systems, 311 NLRB at 766 (concerning side-by-side work and frequency of contact); see Tr. 345, 477; see also Tr. 954-57 (current QA employee testifying that the floor plan currently available to her still shows her in the same office on the second floor); Tr. 788-90 (Union requesting that Employer introduce a comprehensive floor plan into evidence). Along with their frequent use of the second floor's conference room and break room, QAs had ample opportunity to interact with one another, and did so more frequently than

they did across departmental lines. See Transerv Systems, 311 NLRB at 766; Capital Coors, 309 NLRB at 325; cf. D & L Transp., 324 NLRB at 161.

Additionally, and importantly, while QA testers must correspond with employees in other departments in order to relay their findings, most QA tasks entail working in teams with other QA employees in order to achieve the fullest, most multi-faceted testing coverage. See, e.g., Tr. 828, 835 (stating that QAs' contact with developers pre-embed was limited and occurred mainly through Jira); Tr. 1016-20 (stating that, post-embed, QA employee's work occurs exclusively alongside other QAs for the vast majority of the time). Conversely, employees outside the QA department spend a significant amount of time working on their own. Tr. at 838-39 (highlighting the "very close-knit team"-based nature of QA work as a distinctive feature that is different from the work of non-QA employees); see D & L Transp., 324 NLRB at 161; see generally Ex. E-2 (many classifications suggesting work is performed independently); cf. Capital Coors Co., 309 NLRB at 325. Prior to the announcement of the embedded model, a select few QA testers would act as liaisons with other departments at daily or weekly "all staff meetings," but as noted previously, QA department employees continue to have daily department meetings and daily QA-specific Zoom calls, which last the entire day. Davidson Hotel, 371 NLRB, slip op. at 3 (noting the presence of work-related contact but finding no community of interest); see, e.g., Tr. 856-58.

QA testers are not functionally integrated with other Raven employees because they do not work side-by-side; they do not perform similar functions (i.e., testing versus creating); and they do not have frequent, substantial work-related contact. Transerv, 311 NLRB at 766; see Seagate, 18-RC-283636 at 8 (finding functional integration lacking with respect to projects involving multiple trades where one set of workers performs a "specific phase of the work"). While QAs and their colleagues in other classifications may work together "in the broadest

sense" to produce a high-quality product, their work-related interaction is not especially frequent or robust. See Davidson Hotel, 371 NLRB at 3; see also Tr. 602 (stating that the amount of interaction between QAs and other departments correlates to the number of bugs in a feature or product); Tr. 816-17 (detailing QA "smokes" and submission of perceived issues by developers to a QA-specific e-mail address in the form of QARs); Tr. 919-20 (referring to the same).

In the final analysis, the fact that QA testers have surface-level contact with colleagues in their embedded departments (e.g., department-specific Slack channels or weekly meetings) should be accorded less weight than the daily QA meetings and more substantial, regular contact among QAs that occurs as QAs carry out their duties of testing, reporting, and validating bugs. See, e.g., Tr. 580-81 (Employer's witness stating, in the context of the Audio department previous to the embedded model, that the most common interactions between QA testers and other employees involves communication around Jira tickets and "stand-up" meetings); Tr. 597-98 (stating the same in the context of QA testers' interactions with the associate game designer); Tr. 936-37, 957-58, & 1018-20 (detailing QA testers' post-embed interaction inside and outside of the QA department).

Distinct Terms & Conditions of Employment

The question of distinct terms and conditions of employment includes whether employees receive similar wage ranges and are paid in a similar fashion (e.g., hourly or salaried, biweekly, etc.); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. See, e.g., Overnite Transp., 322 NLRB at 350.

Prior to December 2021, unlike employees in other departments, contractors made up almost all of the QA department. Prior to their conversion to FTEs in December 2021, only three QA testers, excluding the QA supervisor, Mr. Clark, were full time. See Tr. 815. To date,

QAs make less money than employees in other departments. In fact, the QA testers currently make less annually than the *minimum* of the salary range for any other job classification at Raven. See Ex. E-30 & E-31. QA testers are all paid hourly; while some employees in other departments are also paid hourly, many are salaried. Ex. E-30. Since the QA department became FTEs in December 2021, they receive substantially the same benefits as other employees. See generally Ex. E-9.

The weightiest of these considerations–the significantly lower pay–distinguishes QA testers from their colleagues, as does the fact that all QA employees are paid an hourly wage. The Regional Director should also consider the fact that QA testers have only enjoyed these benefits since they became employees approximately two months ago, whereas their colleagues in other departments have had these benefits for a longer period of time. Two additional considerations warrant mention: First, although the Employer does not require its employees to wear uniforms, QAs set themselves apart by using a QA-specific avatar in many of the Employer's communications systems. Tr. 867-68. This is analogous to uniforms in other workplaces. See Overnite Transp., 322 NLRB at 350. Second, according to the Employer's human resources classification system, QA testers are designated with an "S," standing for "support," which is true for both QA testers and QA leads. See Ex. E-7 & Tr. 648. Both of these designations underscore that QA testers have an internal community of interest which is separate from that of other employees. See Overnite Transp., 322 NLRB at 350.

It warrants reiterating that QA testers' position is unique within the Employer's operation in that opportunities for advancement lie almost entirely *outside* the department: Unless a QA tester is able to attain one of approximately three "QA lead" positions (which themselves pay less at the top end of their pay scale than the bottom step of many other job classifications), they must change roles and leave the department to access higher pay or expanded responsibilities.

See Ex. E-30 & 31 (outlining pay bands); see also Ex. E-7 (illustrating that even QA leads are coded as "S" for support); Tr. 627 (stating that "embedded tester" correlates to QA Functional Tester II); Tr. 633 (Employer's human resources director stating that the Employer does not currently have any QA leads); Tr. 790 (indicating that much of QA testers' opportunity for advancement depends on their interests beyond QA and taking their own initiative); Tr. 813-15 (describing the promotion track within QA). In order to attain better long-term career prospects, in short, QA testers are in the unique position at Raven of having to look outside their department.

Conclusion

The petitioned-for employees in the QA department have a community of interest among themselves, and their interests are in important respects distinct from those of employees in classifications excluded from the unit. QA testers constitute a distinct administrative grouping within the Employer's operation, perform an essentially different and separate function, and have minimal interchange with their colleagues in other departments. Furthermore, they are paid significantly less and are subject to different educational, certification, and training requirements. For these reasons, the Regional Director should find the petitioned-for unit to be appropriate.

/s/ Angela W. Thompson

Date: March 15, 2022

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CERTIFICATE OF SERVICE

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Service on the Employer:
I hereby certify that on 03/15/22, a copy of Petitioner's post-hearing brief involving the Employer named above was served on the Employer via email to the parties listed below:

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